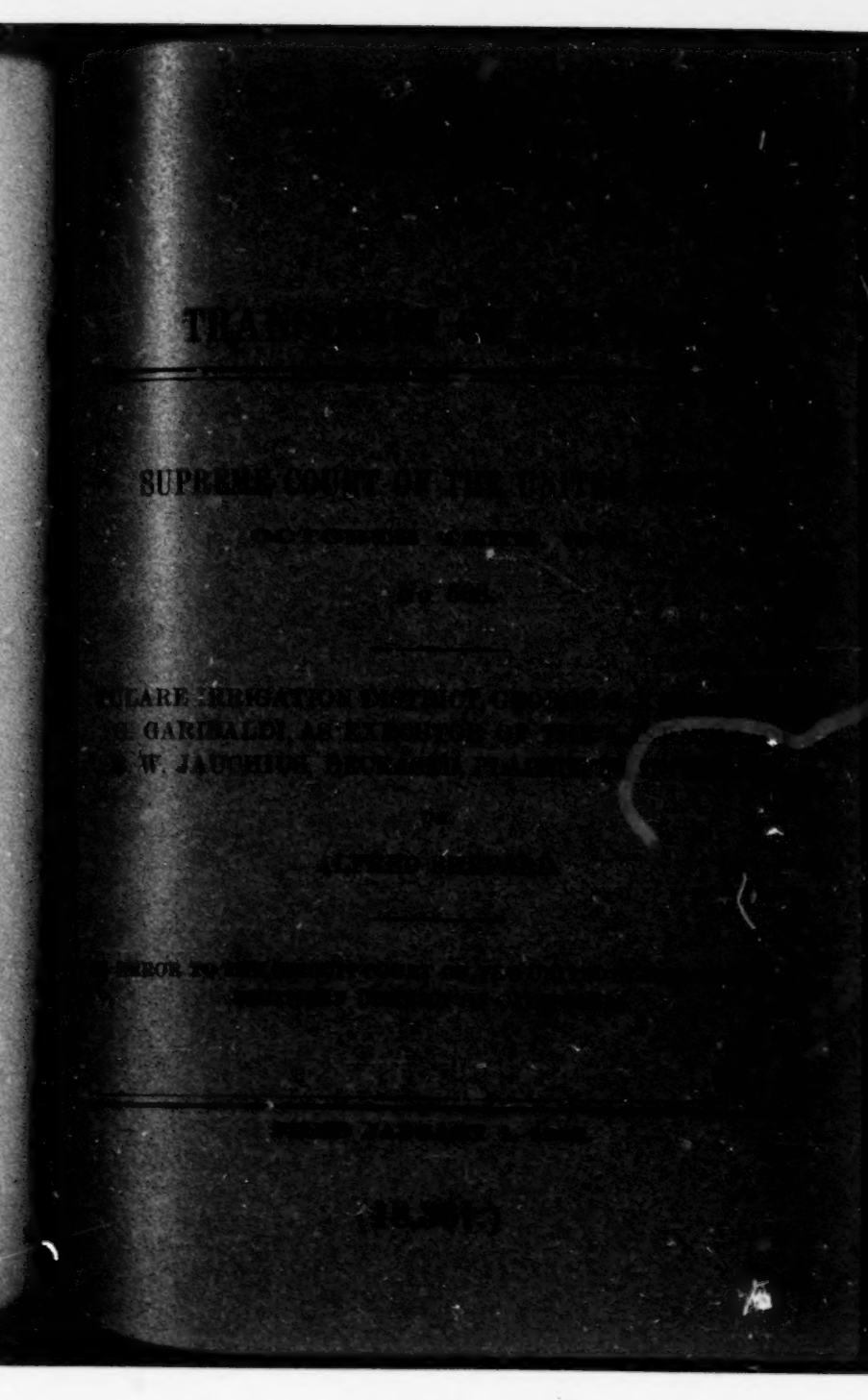

(18,361.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 508.

TULARE IRRIGATION DISTRICT, GEORGE G. KELLY, AND G. GARIBALDI, AS EXECUTOR OF THE LAST WILL OF B. W. JAUCHIUS, DECEASED, PLAINTIFFS IN ERROR,

vs.

ALFRED SHEPARD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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a *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States, ninth circuit, southern district of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Tulare Irrigation District, George G. Kelly and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, plaintiffs in error, and Alfred Shepard, defendant in error, a manifest error has happened to the great damage of the said Tulare Irrigation District, George G. Kelly and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, plaintiffs in error, as by their complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within sixty days from the date hereof in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may
b cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 23rd day of December, in the year of our Lord one thousand nine hundred and one.

[Seal U. S. Circuit Court, Southern Dist. Cal., 1886.]

WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States, Ninth Circuit, Southern District of California,
By CHAS. N. WILLIAMS,
Deputy Clerk.

Allowed by—
OLIN WELLBORN, *Judge.*

c [Endorsed:] In the Supreme Court of the United States. Tulare Irrigation District, George G. Kelly and G. Garibaldi, plaintiffs in error, *vs.* Alfred Shepard, defendant in error. Writ of error. Filed Dec. 23 1901 Wm. M. Van Dyke clerk Chas. N. Williams deputy

I hereby certify that a copy of the within writ of error was on the 23rd day of December 1901, lodged in the clerk's office of the

said United States circuit court for the southern district of California, for the said defendants in error.

WM. M. VAN DYKE,
Clerk U. S. Circuit Court, Southern District of California,
By CHAS. N. WILLIAMS,
Deputy Clerk.

d UNITED STATES OF AMERICA, *ss:*

To Alfred Shepard, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington in the District of Columbia, on the tenth day of February, A. D. 1902, pursuant to a writ of error on file in the clerk's office of the circuit court of the United States of the ninth judicial circuit, in and for the southern district of California, in that certain action number 859, wherein Tulare Irrigation District, George G. Kelly and G. G. Garibaldi, as executor of the will of B. W. Jauchius, deceased, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 23rd day of December, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-sixth.

OLIN WELLBORN,
U. S. District Judge for the Southern District of California.

e [Endorsed:] In the Supreme Court of the United States. Tulare Irrigation District *et al.*, plaintiffs in error, *vs.* Alfred Shepard, defendant in error. Citation. Filed Dec. 26 1901 Wm. M. Van Dyke clerk Chas. N. Williams deputy

Service of the within citation and receipt of a copy thereof is admitted this 24th day of December, A. D. 1901.

S. F. LEIB,
Attorney for Alfred Shepard, Defendant in Error.

f The answer of the judges of the circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California.

The record and all proceedings of the complaint whereof mention is within made, with all things touching the same, we certify under the seal of our said circuit court, to the Supreme Court of the United States, in a certain schedule to this writ annexed as within we are commanded.

By the court:

[Seal U. S. Circuit Court, Southern Dist. Cal., 1886.]

WM. M. VAN DYKE, *Clerk,*
By CHAS. N. WILLIAMS,
Deputy Clerk.

1 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant; GEORGE G. Kelly and B. W. Jauchias, Defendants and Intervenors. } No. 859.

2 In the Circuit Court of the United States, in the Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, a Corporation, Defendant.

The plaintiff above named complains of the defendant above named, and for cause of action alleges:

That the plaintiff is, and for ten years and more last past, has been a citizen of and residing in the State of Michigan, in the United States of America, and at all such times has been and yet is a non-resident of the State of California, and has not at any time been a citizen of the State of California.

That the defendant, Tulare Irrigation District, is and at all times since the second day of September, 1889, has been a corporation, duly incorporated under the laws of the State of California, to wit, as an irrigation district under and pursuant to the provisions of an act of the legislature of the State of California, entitled, "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes," approved March 7th, 1887.

That the said defendant ever since said second day of September, 1889, has been, and now is, acting as such corporation under such act of the legislature of said State, and under the acts of the legislature of said State amendatory thereof and supplemental thereto; with its principal place of business in the county of Tulare, State of California, and with the offices of said corporation in the said county of Tulare, State of California; and all the land embraced in the corporate limits of said corporation are and always have been within the said county of Tulare in said State.

3 That heretofore, to wit, in the month of May, 1890, the board of directors of said defendant, pursuant to the provisions of said acts of said legislature, estimated and determined the amount of money necessary to be raised for the purpose of constructing the necessary irrigation canals and works and acquiring the necessary water and property and rights therefor, and of otherwise carrying out the provisions of said acts, and estimated and determined the amount of money necessary to be raised therefor to be the sum of five hundred thousand dollars; and said board immediately called a special election of the electors of said district at

which should be submitted to such electors possessing the qualifications prescribed by said act whether or not the bonds of said district should be issued in the amount so determined of five hundred thousand dollars.

That notice of such election was given by posting in three public places in each election precinct of said district for at least twenty days, and also by publication of said notice in a newspaper published in said county and where the office of said board of directors of said district was required to be kept, to wit, in the said county of Tulare, once a week for three consecutive weeks, which notices so posted and published specified the time of holding of such election and the amount of bonds so proposed to be issued.

That at said election a majority of the votes cast were in favor of bonds being issued to the amount of five hundred thousand dollars, as aforesaid, said majority of votes being "Bonds—yes," there being 348 votes cast at said election for the issuance of said bonds and only 50 votes cast against the issuance of the same.

That thereupon the board of directors of said defendant caused the bonds of said defendant in the said amount of five hundred thousand dollars to be issued; that each of said bonds was for the principal sum of five hundred dollars, and the same were
4 numbered consecutively from 1 to 1000, inclusive, that all of said bonds with the exception of said numbers were of precisely like tenor and form, and were signed by the president and secretary of said defendant, and the seal of said board of directors was affixed to each of said bonds. A copy of one of said bonds, to wit, the one numbered 400, is hereto annexed, marked "Exhibit A," and made a part hereof.

That coupons for the payment of the interest payable on each of said bonds were attached thereto and were signed by the secretary of said defendant; that each coupon had on the upper right-hand corner thereof and on the back thereof the number of the instalment of interest for which said coupon was given, and had on the lower left-hand corner thereof the number of the bond to which it was attached; that the coupons of each of said bonds were precisely of the same tenor and form of the coupons of each of the other of said bonds, save as to the number placed thereon of the bond to which they were attached, and each of said coupons on each bond was precisely of the same tenor and form of each of the other coupons for interest on such bonds, save as to the amount of interest for which it was given, and save as to the said numbers placed thereon to show the instalment of interest for which said coupon was given. That a copy of one of said coupons, to wit, the one attached to bond numbered 400, given for the twelfth instalment of interest, is hereto attached, marked "Exhibit B," and made a part hereof.

That thereafter a portion of said bonds were by said defendant and its board of directors sold, issued and delivered for at least ninety per cent. of their par value, and the proceeds thereof used for the construction of canals and irrigation works for said district, and the remaining part of said bonds were exchanged issued and delivered by said defendant and its board of directors at their par

value for the conveyances to said district of water, water rights, and other property for irrigation purposes, and said district has thereby been enabled to and has irrigated the lands in such district;
5 but plaintiff has no knowledge and is unable to state which of said bonds were thus sold and which of them were thus exchanged.

That the parties who received the bonds and coupons hereinafter specifically numbered upon such sale or exchange by said district, sold, transferred and delivered the same to innocent and *bona fide* purchasers for the full value thereof, and such purchasers last aforesaid so purchased said bonds and coupons, and so took and received the same for the full value thereof, then paid by them therefor in the usual course of business, and before any of the same were due or dishonored, and in good faith and without any notice of any defect or invalidity of the same or of any of them, or of the title to them or any of them of the party or parties from whom they so received the same.

That said bonds so referred to are numbered as follows, namely: 301 to 315, inclusive; 342 to 356, inclusive; 389 to 396, inclusive; 398 to 418 inclusive; 427 to 430, inclusive; 432 to 452, inclusive, 455 to 468 inclusive; 476; 478; 490; 491; 492; 548; 562; 578; 579; 583; 588 to 603, inclusive; 607; 608; 616; 625 to 628 inclusive; 634 to 639, inclusive; 719 to 725, inclusive; 728; 734; 735; 746 to 749, inclusive; 759 to 916, inclusive; 934 to 943, inclusive; 948 to 952, inclusive; 959; 961; 962; and 978 to 1000, inclusive.

That said defendant paid regularly and as they fell due the first eleven instalments of interest on said bonds represented by the said coupons attached to said bonds represented by instalment numbers on said coupons of 1 to 11, inclusive; but has not paid any part of any of the following coupons for interest on said specifically named bonds, namely: the coupons with the instalment numbers 12, 13, 14, 15 and 16 thereon for interest payable respectively July 1, 1896; January 1, 1897; July 1, 1897; January 1, 1898; July 1, 1898, attached to said bonds numbered 301 to 315, inclusive; 389 to 396, inclusive; 427 to 430, inclusive; 433 to 438, inclusive; 562; 578; 579; 583; 588 to 603, inclusive;
6 607; 608; 616; 625 to 628, inclusive; 634 to 639, inclusive; 719 to 725, inclusive; 728; 746 to 749, inclusive; 814 to 840, inclusive; 924 to 941, inclusive; 961; 962; 989 to 1000, inclusive: the coupons with the instalment numbers 13, 14, 15, and 16 thereon for interest payable respectively January 1, 1897; July 1, 1897; January 1, 1898 and July 1, 1898, attached to said bonds numbered 982 to 988, inclusive: the coupons with the instalments numbered 12 thereon for interest payable July 1, 1896 attached to said bonds numbered 398 to 418 inclusive; 439 to 452, inclusive; 455 to 468 inclusive; 759 to 766 inclusive; 768, to 785, inclusive; 787 to 800, inclusive; 802; 807 to 813, inclusive; 846; 858; 902; 913; 915; 942; 943; 948 to 952, inclusive; 959; 978 to 981, inclusive: the coupons with the instalment number 13 thereon for interest payable January 1, 1897, attached to said bonds numbered 432; 548; 734; 735; 767; 786; 801; 803 to 806, inclusive; 841 to

845, inclusive; 847 to 857, inclusive; 859 to 901, inclusive; 903 to 912, inclusive; 914; 916; and the coupons with the instalment number 16 thereon for interest payable July 1, 1898, attached to said bonds numbered 342 to 356, inclusive; 476; 478; 490; 491 and 492; that all of said unpaid coupons were transferred and delivered to this plaintiff previous to October 1, 1898, and said plaintiff has ever since been the absolute owner holder and bearer thereof; that said plaintiff bought a part of said unpaid coupons before their maturity in good faith and in the usual course of business, and then paid therefor their full value and without any notice of any defects or invalidity of the same or any of them, or the title to them or any of them by the party from whom he so purchased them; and the remainder of said unpaid coupons were transferred to said plaintiff as aforesaid by parties who had all purchased the same before their maturity in good faith in the usual course of business, and paid therefor their full value and without any notice of any defect
7 or invalidity of the same or any of them, or the title to them or any of them of the party or parties from whom they so purchased them. That such coupons so bought by the plaintiff before their maturity *and* are those attached to said bonds numbered 625, 626, 823, 824, 825, 826, 827, 828, 829, 830, 831, 313, 389, 390, 391, 392, 393, 394, 395, 396, 634, 635, 636, 427, 428, 429, 430, 720, 725, 728, 746, 747, 748, 749, 934, 935, 936, 937, 721.

That before the commencement of this action and on October 9, 1898, the plaintiff presented to the defendant and defendant's treasurer at the office of said treasurer in the town of Tulare, in said county of Tulare, State of California, all of said unpaid coupons, and demanded from said defendant and its said treasurer payment of said coupons and offered to surrender said coupons on their payment, but said defendant and its said treasurer failed and refused to pay said coupons or any of them or any part thereof.

Wherefore, plaintiff prays judgment against said defendant for the sum of $13185.00, with interest at the rate of six per cent. per annum on $3600.00 thereof from the first of July, 1896, until paid; on $3255.00 thereof from January 1, 1897, until paid; on $2010.00 thereof from July 1, 1897, until paid; on $2010.00 thereof from January 1, 1898, until paid; and on $2310.00 thereof from July 1, 1898, until paid, all in United States gold coin, and for all costs of suit.

S. F. LEIB,
Attorney for Plaintiff.

8 EXHIBIT A.

Bond No. 400.

STATE OF CALIFORNIA, UNITED STATES OF AMERICA.

Tulare Irrigation District Bond.

TULARE COUNTY, *State of California.*

Tulare Irrigation District, a public corporation, organized and existing under and in pursuance of the laws of the State of California, for value received, promises to pay to the bearer hereof, at the office of the treasurer of said district, the sum of five hundred dollars, in gold coin of the United States, in installments as follows, to wit: At the expiration of eleven years, five per cent. of said sum; at the expiration of twelve years, six per cent. of said sum; at the expiration of thirteen years, seven per cent. of said sum; at the expiration of fourteen years, eight per cent. of said sum; at the expiration of fifteen years, nine per cent. of said sum; at the expiration of sixteen years, ten per cent. of said sum; at the expiration of seventeen years, eleven per cent. of said sum; at the expiration of eighteen years thirteen per cent. of said sum; at the expiration of nineteen years fifteen per cent. of said sum; and at the expiration of the twentieth year, sixteen per cent. of said sum. Said installments are to be paid as provided in, and only on presentation and surrender of the respective installment coupons hereunto attached.

Said district further promises to pay interest on said sum at the rate of six per cent. per annum, payable semi-annually, on the first day of January and July of each year, in gold coin of the United States, on presentation and surrender at the office of the treasurer of said district, of the respective interest coupons hereunto attached.

This bond is one of a series of bonds, amounting in the
9 aggregate to five hundred thousand dollars caused to be issued by the board of directors of said Tulare Irrigation District, by authority of and pursuant to the provisions of an act of the legislature of the State of California, entitled, "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes," approved March 7th, 1887, and also by authority of and in accordance with the vote of the qualified electors of said irrigation district, at a special election held on the 7th day of June, 1890.

The principal and interest of said bonds are to be paid out of the proceeds of annual assessments to be levied upon the lands of the district amounting to 36,719 acres, including the city of Tulare, of the present assessed value of $1,468,153.

In witness whereof this bond has been signed by the president and secretary of the board of directors of said Tulare Irrigation

District, and the seal of said board has been affixed hereto, this first day of July, in the year one thousand eight hundred and ninety.

E. OAKFORD,
Secretary of said Board.

J. W. MACKIE,
President of said Board.

[Seal of said Board.]

10 EXHIBIT B.

Interest Coupon.

$15.00. No. 12.

Tulare Irrigation District will pay to bearer at the office of the treasurer of said district at Tulare, Tulare county, State of California, U. S. A., on July 1st, 1896, the sum of fifteen dollars in gold coin of the United States being semi-annual interest on bond No. 400.

Dated July 1st, 1890.

E. OAKFORD, *Secretary.*

STATE OF SOUTH DAKOTA, } ss:
County of Douglass, }

Alfred Shepard, being first duly sworn, on his oath states that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

ALFRED SHEPARD.

Subscribed and sworn to before me this 10th day of November, 1898.

C. E. FLOETE,
Notary Public in and for the County of Douglass, State of South Dakota.

[SEAL.]

(10c. int. rev. st'p, cancelled.)

11 (Endorsed:) No. 859. U. S. circuit court, ninth circuit, southern district of California. Alfred Shepard, pl'ff, *vs.* Tulare Irrigation District, a corporation, def't. Complaint. Filed Nov. 16 1898 Wm. M. Van Dyke, clerk S. F. Leib, San Jose, California, attorney for plaintiff.

12 UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Southern District of California.

ALFRED SHEPARD, Plaintiff, vs. TULARE IRRIGATION DISTRICT, a Corporation, Defendant.	Action brought in the said circuit court, and the complaint filed in the office of the clerk of said circuit court, in the city of Los Angeles, county of Los Angeles.

The President of the United States of America to Tulare Irrigation District, a corporation, Greeting:

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the circuit court of the United States, ninth circuit, in and for the southern district of California, and to file your plea, answer or demurrer, to the complaint, filed therein (a certified copy of which accompanies this summons), in the office of the clerk of said court, in the city of Los Angeles, county of Los Angeles, within twenty days after the service on you of this summons, or judgment by default will be taken against you.

The said action is brought to recover judgment against said defendant for the sum of $13,185.00 in which amount plaintiff alleges defendant is indebted to said plaintiff, for the interest on certain bonds duly and lawfully issued by defendant and represented by coupons attached to said bonds, which said coupons plaintiff and his assignors bought before their maturity in good faith in the usual course of business and paid therefor their full value and without any notice of any defect or invalidity of the same or any of them or the title to them or any of them, of the party or parties from whom they so purchased them, and plaintiff further alleges that before the commencement of this action and on October 9, 1898, the plaintiff presented to the defendant and defendant's treasurer at the office of said treasurer in the town of Tulare, in said county of Tulare, State of California, all of said unpaid coupons, and demanded from
13 said defendant and its said treasurer payment of said coupons and offered to surrender said coupons on their payment, but said defendant and its said treasurer failed and refused to pay said coupons or any of them or any part thereof.

Plaintiff further prays judgment for interest at the rate of six per cent. per annum on $3600.00 thereof from the first of July, 1896, until paid; on $3255.00 thereof from January 1, 1897, until paid; on $2010.00 thereof from July 1, 1897, until paid; on $2010.00 thereof from January 1, 1898, until paid; and on $2310.00 thereof from July 1, 1898, until paid, all in United States gold coin, and for all costs of suit.

All of which more fully appears from the complaint on file in this cause to which you are hereby expressly referred, and if you fail to appear and plead, answer or demur, as herein required, your default will be entered and the plaintiff will take judgment for the sum demanded in the complaint, viz: $13,185.00 with interest and costs as aforesaid.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the one hundred and twenty-third.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify, that I received the within writ on the 29th day of November, 1898, and personally served the same on the 30th day of November, 1898, by delivering to and leaving with George Q. Gill, the president of the board of directors of The Tulare Irrigation District (a corporation) said defendant named therein, personally, at the county of Tulare (at Tulare city) in said district, a certified copy thereof, together with a copy of the complaint, certified to by Wm. M. Van Dyke, clerk of the U. S. circuit court at Los Angeles, Cal. attached thereto.

H. Z. OSBORNE,
U. S. Marshal,
By E. J. BOUST, *Deputy.*

Fresno, Cal. Nov. 30, 1898.

(Endorsed:) Original. No. 859. U. S. circuit court, ninth circuit, southern district of California. Alfred Shepard *vs.* Tulare Irrigation District, a corporation. Summons. S. F. Leib, Esq., plaintiff's attorney, Filed Dec. 2 1898 Wm. M. Van Dyke clerk.

In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT (a Corporation), Defendant.

Comes now The Tulare Irrigation District, the defendant above named and demurs to the complaint of the plantiff on file herein on the grounds:

I.

Because said complaint does not state facts sufficient to constitute a cause of action against said defendant.

II.

Because said complaint is uncertain in the following particulars:

(*a.*) That it cannot be ascertained from said complaint what notice was given of the election mentioned therein, nor can it be ascertained what was posted by which any notice of such election was given.

(*b.*) That it cannot be ascertained therefrom which of the bonds mentioned in said complaint were sold and delivered for ninety per

cent. of their par value and which of the said bonds were exchanged and delivered for water, water rights, and other property; nor to whom said bonds or any of them were by said defendant sold and exchanged as alleged in said complaint.

(c.) That it cannot be determined therefrom who the innocent and *bona fide* purchasers of said bonds and coupons in said complaint mentioned, are, nor from whom such innocent purchasers obtained the same; nor can it be determined therefrom from whom plaintiff obtained the bonds and coupons mentioned in said complaint.

(d.) That it cannot be determined therefrom the names of the parties who transferred to plaintiff the unpaid coupons men-
16 tioned in said complaint which were transferred to him after their maturity.

(e.) That it cannot be determined therefrom in what manner or by what proceedings the board of directors of defendant sold the bonds alleged in said complaint to have been sold at ninety per cent. of their par value.

III.

That said complaint is ambiguous upon all the grounds and for the reasons stated in paragraph numbered "II" hereof.

IV.

That said complaint is unintelligible for the reasons and upon all the grounds set forth in said paragraph "II" hereof.

Wherefore defendant prays judgment that it be not required to further answer herein and that it be dismissed hence with its costs.

E. W. HOLLAND,
C. L. RUSSELL,
G. W. ZARTMAN,
Attorneys for Defendant.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

E. W. HOLLAND,
C. L. RUSSELL,
G. W. ZARTMAN,
Attorney- for Tulare Irrigation District,
Defendant Above Named.

17 STATE OF CALIFORNIA, } ss:
County of Tulare, }

E. W. Holland, being duly sworn, deposes and says he is an attorney-at-law, and resides at and has his office at the city of Tulare, in the county of Tulare, State of California, and is one of the attorneys of record for the defendant in the within-entitled cause; that S. F. Leib is the *the* attorney of record for the plaintiff in said cause and has his office at Farmers' Union building, city of San Jose, State of California. That at each of said places there is a

United States post-office, and between said places there is a regular daily communication by mail. That on the 5th day of January, 1899, affiant served a copy of the annexed demurrer upon said attorney for the plaintiff by depositing the same enclosed in a sealed envelope in the United States post-office at said city of Tulare, with the postage prepaid thereon, directed to S. F. Leib, attorney-at-law, Farmers' Union building, San Jose, California.

E. W. HOLLAND.

Subscribed and sworn to before me, this 5th day of January —

[SEAL.] C. L. RUSSELL,
Notary Public in and for the County of Tulare, State of California.

(10c. int. rev. st'p, cancelled.)

(Endorsed:) No. 859. In the United States circuit court, ninth circuit, southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, defendant. Demurrer. Filed Jan. 9, 1899. Wm. M. Van Dyke, clerk. Calvin L. Russell, Tulare, Cal., attorney for defendant.

18 At a stated term, to wit, the January term, A. D., 1899, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, held at the court-room in the city of Los Angeles on Monday the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and ninety-nine:

Present: The Honorable Olin Wellborn, district judge.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, a Corporation, Defendant. } No. 859.

In this cause the demurrer to the complaint having been heretofore submitted to the court for its consideration and decision, the court now renders its written opinion, and it is ordered that said demurrer be overruled.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States, for the southern district of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said court April 24th, 1899, in the cause entitled Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, a corporation, defendant, No. 859, and remaining of record therein.

Attest my hand and the seal of said circuit court this 30th day of March, A. D., 1901.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

19 (Endorsed:) No. 859. U. S. circuit court, ninth circuit, southern district of California. Alfred Shepard, *vs.* Tulare Irrigation District. Certified copy of order overruling demurrer. Filed Mar. 30 1901 Wm. M. Van Dyke, clerk.

20 STATE OF CALIFORNIA, } ss:
County of Tulare, }

C. L. Russell, being duly sworn, deposes and says that he is an attorney-at-law, and resides at and has his office at the city of Tulare, in the county of Tulare, State of California, and is one of the attorney- of record for the defendant in the within-entitled cause; that S. F. Leib, Esq., is the attorney of record for plaintiff in said cause and has his office at city of San Jose, State of California. That at each of said places there is a United States post-office, and between said places there is a regular daily communication by mail. That on the 29th day of May, 1899, affiant served a copy of the annexed answer upon said attorney for plaintiff by depositing the same enclosed in a sealed envelope in the United States post-office at said city of Tulare, with the postage prepaid thereon, directed to S. F. Leib, Esq., attorney-at-law, San Jose, California.

C. L. RUSSELL.

Subscribed and sworn to before me, this 29th day of May, 1899.

E. W. HOLLAND,
Notary Public in and for the County of Tulare, State of California.

[SEAL.]

(10c. int. rev. st'p, cancelled.)

21 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant.

Comes now the defendant in the above-entitled action, and for answer to the plaintiff's complaint in said action:

I.

Alleges that said defendant has not sufficient knowledge, information or belief to enable it to answer the first paragraph of said complaint, and on that ground, denies that plaintiff is or at any time in said complaint mentioned was or has been a citizen of, or residing in, the State of Michigan, in the United States of America, or at all or any such times has been or that he is yet a non-resident of the State of California, or that he has not at any or all times been a citizen of the State of California.

II.

Denies that defendant is or at any time mentioned in said complaint was or ever has been an irrigation district duly or otherwise incorporated under the laws of the State of California as an irrigation district under and pursuant to, or under or pursuant to, the provisions of an act of the legislature mentioned in said complaint, or any other act of the legislature of the State of California.

III.

Denies that defendant ever since the 2nd day of July, 1889 or any other time, has been, or that it now is acting as such, or any corporation, under such or any act of the legislature of said or any State; or under the acts of the legislature of said or
22 any State amendatory thereof or otherwise or supplemental thereto, or otherwise or at all, with its principal or any place of business in the county of Tulare, State of California, or elsewhere, or with the office of said or any corporation in said county of Tulare, except as hereinafter stated; denies that all the lands embraced in the corporate or any limits of said corporation are or at any time have been within said county of Tulare, in the State of California, except as hereinafter set forth.

IV.

Denies that in the month of May, 1890 or at any other time, the board of directors of defendant, pursuant to the provisions of said or any acts of said legislature or otherwise or at all, estimated and determined, or estimated or determined, the amount of money necessary to be raised for the purpose of constructing the necessary or any irrigation canals and works, or canals or works, or acquiring the necessary or any water and property and rights, or water or property or rights, therefor, or of otherwise or at all carrying out the provisions of said or any acts or estimated and determined, or estimated or determined, the amount of money necessary to be raised therefor or otherwise or at all to be the sum of $500,000 or any other sum; and denies that said board, immediately or otherwise, called a special or any election of the electors of said district at which should be submitted to such or any electors possessing the qualifications prescribed by said or any act or at all whether or not the bonds of said district should be issued in the amount so or otherwise determined of $500,000 or any other sum, except as hereinafter set forth.

V.

Denies that notice of such or any election was given by posting in three or any other number of public places in each or any election precinct of said district, for twenty or any other number of days; or by publication of said or any notice in any newspaper published in said county, or elsewhere, or where the *the* office
23 of said board of directors of said district was required to be kept in the county of Tulare or elsewhere, once a week for three or any number of successive weeks or at all, which notices, so posted and published, or so posted or published, specified the time of holding of such or any election, and the amount of bonds so or otherwise or at all proposed to be issued, except as hereinafter set forth.

VI.

Denies that at said election a majority or any other number of the votes cast were in favor of bonds being issued to the amount of

$500,000 or in any other amount or at all, except as hereinafter stated.

VII.

Denies that thereupon or at any other time or at all, the board of directors of said defendant caused the bonds of said defendant in the amount of $500,000 or any other sum, or at all to be issued, except as hereinafter stated; denies that each of said or any bonds was for the principal sum of five hundred dollars or any other number of dollars, or that the same were numbered consecutively or otherwise or at all, from one to one thousand inclusive, or otherwise or at all, except as hereinafter stated; denies that all or any of said bonds, with the exception of said numbers, were all of precisely like tenor and form, or were at all of like tenor and form, or of like tenor or form, or were signed by the president and secretary, or by the president or secretary of said defendant, or that the seal of said board of directors was affixed to each or any of said bonds, except as hereinafter set forth.

VIII.

Denies that coupons for the payment of the interest payable on each or any of said bonds were attached thereto, or were signed by the secretary of defendant, except as hereinafter stated.

24 IX.

Denies that thereafter or at any other time, any part of said or any bonds were by the defendant or its board of directors sold, issued and delivered, or sold, issued or delivered, for ninety per cent. or any per cent. of their par value, or that the proceeds thereof were used for the construction of canals and irrigation works, or for the construction of canals or irrigation works for defendant; and denies that the remaining or any part of said or any bonds were exchanged, issued and delivered, or exchanged, issued or delivered, by the defendant or its board of directors at their par value, for the conveyance to said district of water, water rights and other property for irrigation purposes, or for the conveyance of water, water rights or other property for irrigation purposes; and denies that defendant has thereby or otherwise been enabled to or has irrigated the lands of said district.

X.

Alleges that it has no information, knowledge or belief as to the matters alleged in the second paragraph of page "4" of plaintiff's complaint, and upon that ground, denies that the parties who received the bonds and coupons or the bonds or coupons in said complaint specifically numbered, upon such or any sale or exchange, by said district, sold, transferred and delivered, or sold or transferred or delivered said bonds and coupons, or said bonds or coupons to innocent or *bona fide* purchasers for the full value thereof or for any value; and denies that such or any purchasers last aforesaid or otherwise, so or otherwise or at all, purchased said bonds and coupons, or said bonds or coupons, or so or otherwise or at all took or

received the same for the full or any value thereof, then or at any other time or at all paid by them therefor in the usual or any course of business or at all, before any or all of them were due or dishonored, or in good faith or without full notice of all defects and invalidity of the same and of all of them, and of the title to them and all of them of the party and parties from whom they so received the same.

XI.

Denies that the defendant paid regularly or otherwise or at all, as they fell due or at any other time the first eleven or any other number of instalments of interest in said bonds represented by said coupons mentioned in said complaint or otherwise or at all, except as hereinafter set forth.

XII.

Alleges that defendant has no knowledge, information or belief as to the matters stated in the first paragraph on page "6" of plaintiff's complaint, and upon that ground defendant denies that all of said or any unpaid coupons mentioned upon pages "5" and "6" of said complaint were transferred or delivered to plaintiff previous to October 1st, 1896, or that plaintiff has ever since been absolute or any other owner, holder and bearer thereof, or the owner or holder or bearer thereof, at all, or that plaintiff bought a part of said unpaid coupons before their *majority* in good faith*b* or otherwise or at all or in the usual course of business or otherwise or at all, or paid therefor their full or any value without full notice of all defects and invalidity of the same and all of them, and the title to them and all of them, by the party and parties from whom he purchased them; and on the same ground denies that the remainder of said unpaid coupons were transferred to plaintiff as aforesaid or otherwise or at all by parties who had purchased the same or any of them before their maturity in good faith or otherwise or at all, in the usual or any other course of business or at all, or paid therefor their full value without full notice of all defects and invalidity of the same and of all of them, and the title to them and all of the-, of the party and parties from whom they so purchased them; and upon such grounds denies that said coupons bought by the plaintiff before their maturity or otherwise or at all are those attached to the bonds numbered in said paragraph on page "6" of said complaint.

And for a further answer and defense to said complaint defendant alleges:

I.

That on or about the first day of July, 1889, a certain simulated and pretended petition was pretended and attempted to be presented to the board of supervisors of the county of Tulare, State of California, at a regular meeting of said board which said simulated and pretended petition was in the words and figures following, to wit:

"*Petition.*

"To the honorable the board of supervisors of the county of Tulare, State of California:

"The undersigned, your petitioners herein, respectfully represent to your honorable body that we are freeholders owning land within the following-described district, all of which is situated within Tulare county; that we desire to provide for the irrigation of the same; that all of said proposed district as hereinafter described, is susceptible of one mode of irrigation from a common source and by the same system of works; that is to say, by conveying the waters of Kaweah river by means of dams thereon and by main and distributing canals therefrom.

"We therefore petition your honorable body and pray that said hereinafter-described district be organized an irrigation district under an act of the legislature of the State of California, entitled, "An act to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes," approved March 7, 1887.

"The boundaries of said proposed district are as follows:

"Commencing at the northeast corner of section twelve (12) in township nineteen (19) S, range twenty-four (24) E; thence south one (1) mile to the northeast corner of section thirteen (13), township nineteen (19) S, range twenty-four (24) E; from
27 thence east two (2) miles to the northeast corner of section seventeen (17), township nineteen S, range twenty-five (25) E; from thence south three (3) miles to the southeast corner of section twenty-nine (29), township nineteen (19) S, range twenty-five (25) E; from thence west one (1) mile to the southwest corner of section twenty-nine (29) last aforesaid; from thence south four (4) miles to the northwest corner of section twenty (20) township twenty (20) S, range twenty-five (25) E; from thence east one (1) mile to the northeast corner of said section twenty (20) last aforesaid; from thence south three (3) miles to the southeast corner of section thirty-two (32), township twenty (20) S, range twenty-five (25) E; from thence west to the northeast corner of section five (5), township twenty-one (21) S, range twenty-five (25) E; from thence south two (2) miles to the southeast corner of section eight (8), township twenty-one (21) S, range twenty-five (25) E; from thence west ten miles (10) to the southwest corner of section eleven (11), township twenty-one (21) S. range twenty-three (23) E; from thence north two (2) miles to the northwest corner of section two (2), township twenty-one (21), S, range twenty-three (23) E; from thence east to the southwest corner of section thirty-one (31), township twenty (20) S, range twenty-four (24) E; from thence north one and one-half (1½) miles to the southeast corner of the northeast quarter (¼) of section twenty-five (25), township twenty (20) S, range twenty-three (23) E; from thence west to the southwest corner of the northwest quarter (¼) of said section twenty-five (25) last aforesaid; from

thence south one-half (½) mile to the southeast corner of section twenty-six (26), township twenty (20) S, range twenty-three E; from thence west one (1) mile to the southwest corner of said section twenty-six (26) last aforesaid; from t-ence north two (2) miles to the northwest corner of section twenty-three (23), township twenty (20) S, range twenty-three E; from thence east two and one-half (2½) miles to the southwest corner of the southeast quarter
28 (¼) of section eighteen (18), township twenty (20) S, range twenty-four (24) E; from thence north one-half (½) mile to the northwest corner of the southeast quarter (¼) of said section eighteen (18) last aforesaid; from thence east one (1) mile to the southwest corner of the northeast quarter (¼) of section seventeen (17), township twenty (20), S, range twenty-four (24) E; from t-ence north three-fourths (¾) of a mile to the northwest corner of the southwest quarter (¼) of the southeast quarter (¼) of section eight (8), township twenty (20), S, range twenty-four (24) E; from thence east three-fourths (¾) of a mile to the northwest corner of the southeast quarter (¼) of the southwest quarter (¼) of section nine (9), township twenty (20) S, range twenty-four (24) E; from t-ence north one-fourth (¼) mile to the northwest corner of the northeast quarter (¼) of the southwest quarter (¼) of said section nine (9) last aforesaid; from thence east one-fourth (¼) mile to the northwest corner of the southeast quarter (¼) of said section nine (9) last aforesaid; from thence north one-half (½) mile to the northwest corner of the northeast quarter (¼) of said section nine (9) last aforesaid; from thence west two and one-half (2½) miles to the southwest corner of section six (6), township twenty (20) S, range twenty-four (24) E; from t-ence south one-half (½) mile to the southeast corner of the northeast quarter (¼) of section twelve (12) township twenty (20) S, range twenty-three (23) E; from thence west one-half (½) mile to the southwest corner of the northeast quarter (¼) of said section twelve (12) last aforesaid; from thence south one-half (½) mile to the southeast corner of the southwest quarter (¼) of said section twelve (12) last aforesaid; from thence west one-half (½) mile to the southwest corner of said section twelve (12), last aforesaid; from thence south one-half (½) mile to the southeast corner of the northeast quarter (¼) of section fourteen (14), township twenty (20) S range twenty-three
29 (23) E; from thence west one (1) mile to the southwest corner of the northwest quarter (¼) of said section fourteen (14) last aforesaid; from thence south one-half (½) mile to the southeast corner of section fifteen (15), township twenty (20) S, range twenty-three (23) E; from thence west one-half (½) mile to the (¼) southwest corner of the southeast quarter of said section fifteen (15) last aforesaid; from thence north one (1) mile to the northwest corner of the northeast quarter (¼) of said section — (15) last aforesaid; from thence east one-half (½) mile to the northeast corner of said section fifteen (15) last aforesaid; thence north one (1) mile to the northwest corner of section eleven (11), twp. twenty (20) S, range twenty-three (23) E; from thence east one (1) mile to the northeast corner od said section eleven (11), last aforesaid; from thence north one (1) — to the southwest corner of section thirty-six (36) township

nineteen (19) S, range twenty-three (23) E; from thence west along the township line about two and one-half (2½) miles to the west line of the swamp and overflowed land on Packwood creek; from thence northeasterly along the meandering west line of said swamp and overflowed land to the northeast corner of the southeast quarter (¼) of section thirteen (13), township nineteen (19) S, range twenty-three (23)E; from thence north to the northwest corner of section eighteen (18), township nineteen (19) S, range twenty-four (24) E; from thence east three (3) miles to the northwest corner of section fifteen (15), township nineteen (19) S, range twenty-four (24) E; from thence north one (1) mile to the northwest corner of section ten (10), township nineteen (19) S, range twenty-four (24) E; from thence east three (3) miles to the northeast corner of section twelve (12), township nineteen (19) S, range twenty-four (24) E; the place of beginning.

"We respectfully request that said district be designated as the Tulare irrigation district."

30	No. acres.		No. acres.
" 1. J. Goldman	900	J. W. Stufflebeem	160
" 2. J. C. Gist	80	J. B. Zumwalt	900
" 3. William Bruce	160	H. H. Francisco	40
" 4. C. H. Nelson	12½	F. Rosenthal	36
" 5. E. Lathrop	320	J. W. Dunlap	40
" 6. C. A. Hitchcock	80	Thos. H. Thompson	720
" 7. Geo. T. Trescott	100	S. S. Ingham	400
" 8. Jos. Kirkner	80	J. L. Bachelder	130
" 9. T. J. Gist	160	Frederick H. Wales	278
"10. Z. H. Morris	40	Joseph Merritt	160
"11. Alfred Fay	160	J. O. Lovejoy	50
"12. George Hewitt	226	J. W. Mackie	160
"13. B. Noussitou	260	James Stewart	180
"14. W. A. Jacobs	494	W. I. Burnett	1091
"15. W. H. Coggeshall	120	W. H. Alford	32
"16. J. W. Chinowith	84	M. H. Patton	160
"17. W. F. Cartmill	150	P. D. Fowler	90
"18. J. B. Hamilton	159	R. N. Haugh	243
"19. Sam. Newell	320	C. Dunning	93
"20. Rob't Newell	160	Anson P. Hall	20
"21. John W. Hooper	680	John M. Ginley	507
"22. E. J. Hodges	80	Luke F. Warren	480
"23. J. T. Chism	180	Amos Hicks	10
"24. W. F. Stewart	160	E. A. Braly	40
"25. S. Fowler	200	M. M. Burnett	500
"26. I. A. Moorehead	240	S. A. Blythe	20
"27. Eva M. Moody	80	O. S. Woodruff	20
"28. John A. Goble	40	H. K. Ayer	32
"29. Sam. Richardson	250	S. Weaver	380
"30. B. M. Alford	40	A. W. Stewart	80
"31. A. T. Cotton	320	O. B. Taylor	32
"32. R. H. Parrish	160	B. G. Parker	
"33. W. E. Brown	160	J. H. Aten	80
31 "34. E. T. Cosper	160	C. G. Hough	240
"35. W. H. Hillhoren	160	D. O. Hammon	180
"36. C. S. Jordon	320	J. W. Davis	30
"37. John C. Hawkins	80	E. Oakford	180
"38. H. E. Dye	160	John G. Eckles	3
"39. Theo. Harris	80	A. W. De Witt	20
"40. E. W. Dutcher	40	A. A. Hall	40

"41. J. F. Boller		J. H. Stufflebeem	480
"42. B. F. Moore	300	R. T. McMillen	32
"43. William Swall	160	G. W. Conner	5
"44. Jesse Richardson	60	R. S. Hill	145
"45. Amos Roberts	779	E. M. De Witt	640
"46. E. Nolfskill	779	J. M. Hart	30
"47. R. B. Snell	100	Clulli Averill	60
"48. H. S. Haseltine	140	F. M. Schultz	5
"49. Mary L. Smith	342	G. W. Kirkes	80
"50. J. E. Carter	80	C. H. Randell	160
"51. Wm. Carpenter	225	Wm. Dobson	7
"52. A. T. Fowler		Thomas Dobson	22
"53. Sol Ephraim	729	T. W. Maples	
"54. L. E. Schoenemann		Frank P. Taylor	
"55. A. J. Pillsbury		H. A. Charters	
"56. Chas. M. Hatch		Miles Ellsworth	
"57. H. Frank Tandy	10	G. Q. Gill	
"58. S. D. Ayers	170	L. H. Stokes	7
"59. S. Bowles		J. A. Allen	
"60. I. H. Hamm		E. W. Holland	
"61. L. Schoenfeld		R. K. Ham	
"62. R. Linder		R. S. Black	
"63. J. M. Alexander	170	Sam'l T. Alexander	1890
"64. D. W. Madden		R. Chandler	135½
"65. E. T. Bucknam		T. Bacigalupi	320
"66. S. Witkowski"			

And said simulated and pretended petition was then and
32 there filed, and ever since then has been and is now one of the public records of said board of supervisors, and of said Tulare county. That no other petition for the organization of said alleged and pretended Tulare irrigation district has ever been presented to, or filed with, said board of supervisors.

II.

For two weeks next preceding said time, to wit, during the month of June, 1889, said pretended petition was printed and published in a newspaper printed and published in said county of Tulare, namely, the "Tulare Weekly Register."

III.

That during the same period of time last mentioned there was printed and published in said newspaper and immediately following and below said pretended petition in the same column of said paper the following words and figures, to wit:

"*Notice.*

"Pursuant to the statutes in such cases made and provided notice is hereby given that the above and foregoing petition will be presented to the board of supervisors in and for the county of Tulare at their first regular meeting in the month of July, 1889, to wit, on Monday the 1st day of July, 1889, at which time any person or persons desiring so to do may present their objections, if any they have, why said petition should not be granted."

No other notice whatever of the hearing of said or any simulated petition or of any purported petition for the organization of said Tulare irrigation district was ever given or published, either by said pretended petitioners or otherwise.

IV.

Said purported and pretended notice was not signed by said petitioners or any of them or by any one, and the same did not specify any place where the petition therein referred to or any petition would be presented; and the same, for said reasons in addi-
33 tion to other reasons herein alleged, was illegal, null and void and constituted no notice whatever nor any process of law, and the same and all the proceedings subsequent thereto, and based and founded thereon which are herein alleged were and are, and each and every one of them is and was, without jurisdiction, and void and in violation of section 13 of article I of the constitution of this State, and of articles 5 and 14 of the amendments of the Constitution of the United States that no person shall be deprived of property without due process of law.

V.

Said simulated and pretended petition did not designate nor specify either the mode of irrigation, the common source or the system of works from or by which the lands of the signers thereof, the lands embraced within the boundaries of said proposed district, or any portion thereof or any lands could be irrigated.

VI.

Said simulated and pretended petition purported to be signed by fifty or more freeholders owning lands susceptible of one mode of irrigation from a common source and by the same system of works, but that it does not appear therein or therefrom whether the lands so referred to were situated within the boundaries of the said proposed district or outside of the said boundaries, nor where the same nor any portion of them were situated, nor whether said purported signers were freeholders nor that they were, nor any of them was a freeholder owning lands within the boundaries of the said proposed district. Nor were said several matters nor any of them found or determined by said board of supervisors nor entered in the minutes of said board at any time. In truth and in fact, said simulated and pretended petition was not signed by fifty or by a majority of the freeholders owning lands situate within the boundaries mentioned and described therein who desired to provide for the irrigation of their said lands.

34 VII.

Defendant further alleges that it has information and believes and so states the fact to be, that no evidence was taken by or before said board of supervisors at any time during the proceedings herein alleged for the purpose of ascertaining, nor did said board ascertain

at any time, how many of the persons whose names were signed to said pretended petition owned any real property within the proposed boundaries of said proposed district other than city or town lots, nor was said question considered by said board before taking final action upon said pretended petition.

VIII.

That at the time of the presentation of the petition, to wit, July 1st, 1899, the board of supervisors caused to be entered on the minutes of said board the following order:

"In the matter of the petition for the formation of the Tulare irrigation district.

"A petition praying for the formation of an irrigation district to be known as the Tulare irrigation district, having been this day filed and presented to this board and the necessary bond having been filed with said petition and it satisfactorily appearing to this board that due notice of the presentation of said petition has been given as required by law and the following-named persons, to wit, Geo. D. Bliss, D. O. Harrelson and James Turner, appeared and asked to have their lands excluded from said district, whereupon witnesses were sworn and examined on behalf of said parties. Thereupon the board ordered that the hearing of said petition be set for Saturday, July 6th, 1889, at ten o'clock a. m."

That on Saturday, July 6th, 1889, said board met pursuant to adjournment and caused to be entered the following order on its said minutes:

"In the matter of the formation of Tulare irrigation district.

35 "The board occupied the day in hearing testimony to have lands excluded from said district."

On Tuesday, July 9th, 1889, the board caused the following order to be entered on its said minutes:

"In the matter of the petition for the formation of the Tulare irrigation district.

"Application to have lands excluded from said district having been presented and filed, a motion was made by Supervisor Henderson that all the applicants who have a sufficient amount of water now or who would not be benefitted by the proposed system of irrigation be excluded from this district upon fixing the final boundaries by the board, which motion was carried by the following vote: Aye: Henderson, Newport, Borton. No: Woody."

That on Thursday, July 11th, 1889, the board caused the following order to be entered on its said minutes:

"In the matter of the petition of J. Goldman and others for the formation of an irrigation district.

"At a regular meeting of the board of supervisors of the county of Tulare, held at their usual place of meeting in the court-house at Visalia, on Monday the 1st day of July, 1889, J. Goldman, J. C. Gist, William Bruce and more than fifty other persons duly presented to this board a petition in writing signed by them respectively, praying that the lands embraced in the proposed district, the boundaries of which were set forth and particularly described in said petition, be organized into an irrigation district under the provisions of an act of the legislature of the State of California, entitled, 'An act to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes, approved March 7th, 1887.' Said petition was accompanied with a good and sufficient bond on behalf of petitioners in double the amount of the probable costs of organizing said district, conditioned that the said bondsmen will pay all said costs
36 in case said organization shall not be effected, which said bond was duly approved by said board of supervisors, and received with said petition and filed with the clerk of said board, and thereupon the further hearing and consideration of said petition and the matter of the organization of said therein proposed district was by said board duly continued and set for hearing on the 6th day of July, 1889, at ten o'clock, a. m. At which time the board duly convened and proceeded to the further hearing of the matter of said petition, and it appearing that several persons owning lands within the boundaries of said proposed district as set forth in said petition, were present before said board and had filed with the clerk of said board their several applications in writing asking that the lands severally owned by them be excluded from said irrigation district as finally fixed by said board upon the ground that such land will not be benefitted by irrigation by said system proposed in said petition, the board proceeded to hear the testimony and proofs offered in evidence by and on behalf of said petitioners, and by and in behalf of said applicants to have their lands excluded from said district, and the board having adjourned said hearing from time to time, and said testimony and proofs having been fully received, and the matter of the formation of said proposed district, and the proper boundaries having been fully argued to said board by attorneys representing the different parties having an interest in said matters, and the board having fully considered the testimony and proofs and arguments of said attorneys; now on this 11th day of July, 1889, finds the facts to be as follows, to wit: That said petition for the formation of said proposed irrigation district was duly signed by more than fifty freeholders owning lands susceptible of one mode of irrigation from a common source by the same system of works, which lands are embraced within the boundaries of said proposed district
37 as hereinafter modified, fixed and established by said board, and that said petitioners desire to provide for the irrigation

of said lands. That after said petition was signed by said petitioners and before the same was presented to this board as hereinafter stated, said petition together with a notice stating that said petition would be presented to this board on Monday, the 1st day of July, 1889, was duly published for three consecutive weeks next before said 1st day of July, 1889, in the 'Weekly Tulare Register' a weekly newspaper printed and published in said Tulare county, that on Monday, the 1st day of July, 1889, being the first day of the regular July meeting of this board, and this board being then convened in regular session, said petition was d-ly presented to this board and at the same time and accompanying said petition, said petitioners presented to this board a good and sufficient bond in double the amount of the probable costs of organizing said district, and conditioned that the boudsmen, the obligors in said bond named, will pay all costs in case said organization shall not be effected, which said bond was duly approved by this board, and filed with the clerk thereof.

"That in order to comply with the requirements of said act of the legislature hereinbefore cited, it is necessary to make changes in the boundaries of said district proposed by said petitioners and to exclude and except from the operation of said act of the legislature hereinbefore cited, and from said proposed district, certain lands within the exterior boundaries of said proposed district as the same are hereinafter and hereby established and defined for the reason that in the opinion of this board said lands so excepted are lands which will not be benefitted by irrigation by the same system of works applicable to the other lands in such proposed district, which lands so excepted are hereinafter specifically designated and described.

38 "That all the lands embraced within the boundaries of said proposed district as the same are hereinafter established and defined other than the lands excepted from the said proposed district and hereinafter specifically designated are susceptible of one mode of irrigation from a common source and by the same system of works.

"Wherefore it is ordered and adjudged by said board of supervisors that t-e boundaries of said proposed irrigation district be and they are hereby established and defined as follows, to wit:

"Commencing at the quarter-section corner on the east side of section 20, in township 19, south of range 25 east Mt. Diablo base and meridian; running thence west ½ mile, thence north ¼ mile, thence west ½ mile, thence north ¼ mile, thence west ½ mile, thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west ½ mile, thence sout- ¼ mile, thence west ½ mile, thence south ¾ miles, thence west ½ mile, thence south 1 mile, thence west about 250 rods more or less to the east side of the Southern Pacific Railway right of way, thence a little west of north on said railway line ½ mile more or less to the center section line running east and west through section 27 in township 19 south, range 24 east, thence east ½ mile more or less, to quarter-section corner on the east side of said section 27, thence north ½ mile, thence west ¼ mile, thence north 1 mile, thence west ¼ mile, thence south ½ mile, thence west

¼ mile, thence north ½ mile, more or less, to the east side of the Southern Pacific Railway right of way, thence northerly along the said east line of the said right of way 1 mile, more or less, to the north line of section 16, township 19, south, range 24 east thence west 2½ miles, more or less, to the northwest corner of section 18, township 19, south, range 24 east, thence south ½ mile, more or less, to the northerly line of the United States survey of the swamp and overflowed land along the line of the Packwood creek, thence southwesterly following the meanders of said line of the swamp and overflowed land five miles more or less, to the township line between townships 19 and 20 south, at a point at or near the quarter-section corner on the south side of section 33, township 19 south, range 23 east, thence east on said township line ¾ miles more or less to the southwest corner of the southeast quarter of the southwest quarter of section 34, township 19 south, range 23 east, thence north ¼ mile, thence east ¼ mile, thence north ¾ miles, thence east 1½ miles, thence north 1 mile thence east ½ mile, thence south 1 mile, thence east 1½ miles, thence south 1 mile, thence west 1 mile, thence south 1 mile, thence west 2 miles, thence south 1½ miles, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ¾ miles, thence east ½ mile, thence south ¼ mile, thence east ½ mile, thence south ¼ mile, thence west ½ mile, thence south ¼ mile, thence east 1 mile to the quarter-section corner on the south side of section 4, township 20 south, range 24 east, thence south ½ mile, thence west ¼ miles, thence south ¼ miles, thence west ¾ miles, thence south ¾ miles, thence west 1 mile, thence south ½ miles, thence west 2½ miles, thence south 2 miles, thence east 1 mile, thence north ½ mile, thence east 1 mile, thence south ½ mile, thence east ½ mile, thence north ½ mile, thence east ½ mile, thence south 1¼ miles, thence east ½ mile, thence south 2¼ miles, thence east 1 mile, more or less, to the channel of Elk bayou, thence following the meanders of said Elk bayou in a northeasterly direction about 3 miles more or less to the ¼-section line running north and south through section 2, township 21, south, range 24 east, thence north on said ¼-section line ½ mile more or less, to the northwest corner of the south ½ of northeast ¼ of said section 2, thence east ½ mile, thence north ¾ mile, thence west ½ mile thence north 1¼ miles, thence west ¼ mile, thence north about 60 rods to the line of the swamp and overflowed land on the northeast ¼ of section 27, township 20, south, range 24 east, thence along the meanderings of said line of the swamp and overflowed land in a northeasterly direction about 80 rods, more or less to where said line crosses section line between sections 22 and 27 in township 20, south range 24 east, thence east on said section line 10 rods more or less to the southeast corner of said section 22, thence north ¼ mile, thence east ½ mile, more or less, to the Southern Pacific railway, thence northerly along said railway 20 rods more or less, to the north line of the swamp and overflowed land on section 23, township 20 south, range 24 east, thence northeasterly about 3 miles, more or less, following the meanderings of said northerly line of said

swamp and overflowed land to the east line of section 18 at or near the ¼-section corner on the east side of said section 18, in township 20, south, range 25 east, thence north ½ mile, more or less, to the northeast corner of said section 18, thence west ½ mile, thence north ¾ miles, thence west ½ mile, thence north ¾ miles, thence east ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west 1 mile, thence south ½ mile, thence west ½ mile, thence north ½ mile, thence east ½ miles, thence north ½ mile to the center of section 36, township 19 south, range 24 east, thence west ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence south ½ mile, thence east ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile more or less to the line of the swamp and overflowed land on the northeast ¼ of section 29, township 19 south, range 25 east, thence southwesterly following the meanderings of said line of said swamp and overflowed land about ⅗ths of one mile more or less to the east line of the
41 west ½ of northwest ¼ of section 29 in township 19 south, range 25 east, thence south on said line 30 rods more or less to the southeast corner of said west ½ of the northwest ¼ of said section 29, thence west 30 rods more or less to the line of the swamp and overflowed land, thence southwesterly following the meanderings of said line of swamp and overflowed land about 40 rods to west line of said section 29, thence south on said section line about 140 rods more or less to the southwest corner of said section 29, thence east one mile, thence north 120 rods, thence west 40 rods, thence north 40 rods, thence east 40 rods, thence north one mile to the place of beginning.

"That the following is a particular description of the lands situate within the exterior boundaries of said proposed district hereinbefore referred to which are excpeted from the operation of said act of the legislature hereinbefore cited, and excepted and taken out of said proposed district, to wit:—

"S. E. ¼ of S. E. ¼ of sec. 24, N. ½ of N. ½ & S. E. ¼ of N. W. ¼, sec. 25, T. 19 S. R. 25 E., S. 142 A. of S. W. ¼ of sec. 3, E. ½ & N. E. ¼ & N. ½ of S. E. ¼ of sec. 15 W. ½ of N. W. ¼ of sec. 23, N. E. ¼ of N. W. ¼ & N. ½ of N. E. ¼ & fr'l 44 A. of S. E. ¼ of sec. 28, T. 20 S., R. 24 E.

"And it is hereby ordered that the said proposed district be and the same is hereby divided into five divisions as nearly equal in size as practicable, and numbered respectively first, second, third, fourth and fifth, as follows, to wit:"

(Here follows description of the separate boundaries of each division of said district.)

42 "And it is further ordered that — an election held in said district at the various polling places hereinafter specified and ordered within the boundaries of said district between the hours specified by law on Saturday the 24th day of August, 1889, for the purpose of determining whether said proposed district shall be organized under the provisions of said act of the legislature of

this State hereinbefore cited, and referred to, said irrigation district shall be known and designated as the 'Tulare irrigation district.'

"And it is further ordered that notice of such election signed by the chairman and clerk of this board and attested by the official seal of this board, be given, which notice shall describe the boundaries of said proposed district established by this board and shall designate the name of said proposed district, to wit, 'the Tulare irrigation district' and shall require the electors of said district to cast ballots which shall contain the *owrds*, 'Irrigation district—Yes' or 'Irrigation district—No,' or words equivalent thereto, and shall contain the names of persons to be voted for to fill the following offices of said proposed district, to wit: an assessor, a collector, a treasurer, and a board of five directors, one of said directors to be elected from each of said divisions of said proposed district herinbefore described and for the purpose of the election above provided for, election precincts are hereby ordered and established in said proposed district as follows, to wit:"

(Here follows a description of the five election precincts in said proposed district and also includes the names of the polling places and the names of the persons who are to act as election officers.)

IX.

43 And thereafter, to wit, on the 2nd day of September, 1889, said board of supervisors made the following entry on their minutes, to wit:

"The board of supervisors of Tulare county, State of California, met as a board of canvassers on Monday, the second day of September, 1889, for the purpose of determining the result of the special election held in said Tulare county, as follows: Held on the 24th day of August, 1889, to vote for and against the organization of the Tulare irrigation district and officers therefor.

"Present: D. V. Robinson, chairman. T. E. Henderson, James Barton, W. J. Newport, supervisors.

"Absent: Supervisor J. H. Woody.

"And the returns of said election being filed with the county clerk and *ex officio* clerk of said board they were this day opened and canvassed by said board of supervisors, from which it appears that there were cast for 'Irrigation district—Yes' and for 'Irrigation district—No.' and for each of the persons hereinafter named for the respective offices of such proposed irrigation district, the following votes, to wit:"

(Here follows a statement of number of votes cast for and against the proposed district and the number of votes cast for each candidate for each office in the proposed district and then proceeds as follows:)

"Now therefore we the board of supervisors of Tulare county, State of California, do hereby declare that at the special election held in said Tulare county on Saturday the 24th day of August, 1889, for the purpose of voting for and against the formation of a proposed irrigation district to be known as the Tulare irrigation district

and for officers for such district, the number of votes are correct as set forth in the foregoing statement.

44 "That the several candidates for the respective offices named and 'Irrigation district—Yes' and 'Irrigation district—No' received the whole number of votes set opposite their respective names and places in said statement.

"And we further declare the territory embraced in the following-described limits, to wit:

"Commencing at the quarter-section corner on the east side of section 20 in township 19 south of range 25 east, Mt. Diablo base and meridian, running thence west ½ mile, thence north ¼ mile, thence west ½ mile, thence north ¼ mile, thence west ½ mile, thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west ½ mile, thence sout- ¼ mile, thence west ½ mile, thence south ¾ mile, thence west ½ mile, thence south 1 mile, thence west about 250 rods more or less to the east side of the Southern Pacific Railway right of way, thence a little west of north on said railway line ½ mile more or less to the center section line running east and west through section 27 in township 19 south range 24 east, thence east ½ mile, more or less, to quarter-section corner on the east side of said section 27, thence north ½ mile, thence west ¼ mile, thence north 1 mile, thence west ¼ mile, thence south ½ mile, thence west ½ mile, thence north ½ mile, more or less to the east side of the Southern Pacific Railway right of way, thence northerly along the said east line of the said right of way 1 mile, more or less to the north line of section 16, township 19 south, range 24 east, thence west 2½ miles more or less, to the northwest corner of section 18, township 19 south, range 24 east, thence south ½ mile more or less to the northerly line of the United States survey of the swamp and overflowed land along the line of the Packwood creek, thence southwesterly following the meanderings of said line of swamp and overflowed land, five miles more or less, to the township line between townships 19 and 20 south, at a point at or near

45 the quarter-section corner on the south side of section 33, township 19, south, range 23 east, thence east on said township line ¾ miles more or less to the southwest corner of the southeast quarter of the southwest quarter of section 34, township 19 south, range 23 east, thence north ¼ mile, thence east ¼ mile, thence north ¾ miles, thence east 1½ miles, thence north 1 mile, thence east ½ mile, thence south 1 mile, thence east 1½ miles, thence south 1 mile, thence west 1 mile, thence south 1 mile, thence west 2 miles, thence south 1½ miles, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ¾ miles, thence east ½ mile, thence south ¼ mile, thence east ½ mile, thence south ¼ mile, thence west ½ mile, thence south ¼ mile, thence east 1 mile, to the quarter-section corner on the south side of section 4, township 20 south, range 24 east, thence south ½ mile, thence west ¼ mile, thence south ¼ mile, thence west ¾ miles, thence south ¾ miles, thence west 1 mile, thence south ½ mile, thence west 2½ miles, thence south 2 miles, thence east 1 mile, thence north ½ mile, thence east 1 mile,

thence south ¼ mile, thence east ½ mile, thence north ½ mile, thence east ½ mile, thence south 1¼ miles, thence east ½ mile, thence south 2¼ miles, thence east 1 mile more or less to the channel of Elk bayou, thence following the meanderings of said Elk bayou in a northeasterly direction about 3 miles more or less to the ¼-section line running north and south through section 2, township 21 south, range 24 east, thence north on said ¼-section line ½ mile more or less to the northwest corner of the south ½ of northeast ¼ of said section 2, thence east ½ mile, thence north ¾ mile, thence west ½ mile, thence north 1¼ miles, thence west ¼ mile, thence north about 60 rods to the line of the swamp and overflowed land on the northeast ¼ of section 27, township 20 south, range 24 east, thence along the meanderings of said line of the swamp
46 and overflowed land in a northeasterly direction about 80 rods more or less, to where said line crosses section line between section- 22 and 27 in township 20 south, range 24 east thence east on said section line 10 rods, more or less to the southeast corner of said section 22, thence north ¼ mile, thence east ½ mile, more or less to the Southern Pacific railway, thence northerly along said railway 20 rods more or less, to the north line of the swamp and overflowed land on section 23, township 20 south, range 24 east, thence northeasterly about 3 miles more or less, following the meanderings of said northerly line of said swamp and overflowed land to the east line of section 18, at or near the ¼-section corner on the east side of said section 18, in township 20 south, range 25 east, thence north ½ mile, more or less, to the northeast corner of said section 18, thence west ¼ mile, thence north ¾ miles, thence west ½ mile, thence north ¾ miles, thence east ¼ miles, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west 1 mile, thence south ½ mile, thence west ½ mile, thence south ½ mile, thence west ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile to the center of section 36 township 19 south, range 24 east, t–ence west ½ mile, t–ence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence south ½ mile, thence east ¼ mile, thence *thence* north ½ mile, thence east ¼ mile, thence north ½ mile, thence east 1 mile more or less to the line of the swamp and overflowed land on the northeast*v* ¼ of section 29, township 19 south, range 25 east, thence south*w*asterly following the meanderings of said line of said swamp and overflowed land about ⅗ths of one mile, more or less, to the east line of the west ½ of northwest ¼ of section 29 in township 19 south, range 25 east, thence south on said line 30 rods more or less to the southeast corner of said west ½ of the northwest ¼ of said section 29, thence west 30 rods more or less to the line of the swamp and overflowed land, thence southwesterly following
47 the meanderings of said line of swamp and overflowed land about 40 rods to the west line of said section 29, thence south on said section line about 140 rods more or less to the southwest corner of said section 29, thence east one mile, thence north 120 rods, thence west 40 rods, thence north 40 rods, thence east 40 rods, thence north one mile to the place of beginning. Excepting there-

from S. E. ¼ of S. E. ¼ of sec. 24, N. ½ of N. ½ & S. E. ¼ of N. W. ¼ sec. 25 T. 19 S. R. 25 E. S. 142 A. of S. W. ¼ of sec. 3, E. ½ & N. E. ¼ & N. ½ of S. E. ¼ of sec. 15, W. ½ of N. W. ¼ of sec. 23, N. E. ¼ of N. W. ¼ & N. ½ of N. E. ¼ & fr'l 44 A. of S. E. ¼ of sec. 28, T. 20 S. R. 24 E. An irrigation district duly organized under the name and style of "Tulare irrigation district." Being situated in the county of Tulare, State of California, and we further declare that,

"A. P. Merritt was duly elected director in division No. 1 of said district;
"W. B. Cartmill " " " " " " " 2 " "
"J. W. Mackie " " " " " " " 3 " "
"S. Richardson " " " " " " " 4 " "
"J. F. Gibson " " " " " " " 5 " "
"A. O. Erwin " " " assessor of said district;
"Alfred Fay " " " collector " "
"John A. Goble " " " treasurer " "

"D. V. ROBINSON, *Chairman.*

"Attest: JOHN G. KNOX, *Clerk*,
"By T. W. HOLDER,
"*Deputy Clerk.*"

X.

Defendant further alleges that neither said petition hereinbefore set out at length, the petition referred to in said order so entered in said minutes nor any other petition or purported or pretended petition for the organization of, or pretended organization
48 of said or any irrigation district to be designated and known as Tulare irrigation district was or ever has been copied or set out at length in the minutes of said board of supervisors or designated, described, referred to or identified in any other way than as appears in the order of said board aforesaid so entered in its minutes, and it cannot be nor could it at any time have been ascertained or determined from said order or the minutes of said board of supervisors what petition was mentioned or referred to in said minutes, or filed with said board nor what said petition contained nor who were the signers or purported signers thereof, nor whether the same was a sufficient or legal petition, nor whether the purported signers of the same were legal or qualifies signers thereto, nor whether the real property situate within the boundaries of the proposed district mentioned therein (if any) were susceptible to one mode of irrrigation or of irrigation from a common source or of irrigation by the same system of works, nor in nor by what name said proposed district was to be known or organ*ganized*; nor what were the proposed boundaries thereof, nor what lands were included within said proposed boundaries or to be effected thereby, nor where the same were situated nor whether any of the real property owned by any of the signers thereof was *was* situated within the proposed boundaries thereof; nor whether the petition therein referred to was the same petition herein set out, nor any of said matters nor any other matter required to be stated was contained therein or known to said board or to any other persons interested therein except as hereinafter appears.

XI.

As defendant is informed and believes and so alleges, the bond referred to in said order of said board of supervisors as having been filed with said petition and the only bond filed therewith or in connection with said proceedings was in the words and figures following, to wit:

49 "Know all men by these presents that we, J. Goldman, A. T. Cotton, E. A. Braly, Alfred Fay and T. H. Thompson, residents of the county of Tulare, State of California, are jointly and severally held and firmly bound unto the County of Tulare, in the penal sum of one thousand dollars for the payment of which well and truly to be made unto said Tulare County, we jointly and severally bind ourselves, our and each of our heirs, executors and administrators firmly by these presents.

"Sealed with our seals and dated this 1st day of July, 1889.

"The condition of the above obligation is such, that whereas J. Goldman, J. C. Gist, William Bruce, C. H. Nelson and other their associates, have signed and published and propose to present herewith to the board of supervisors of said Tulare county, a petition praying that an irrigation district be organized in said county in conformity with the boundaries stated in said petition, to be called the Tulare irrigation district;

"And whereas said board of supervisors have estimated the probable cost of oganizing said district at the sum of $500,

"Now therefore if the above-bounden obligors shall well and truly pay, or cause to be paid to said Tulare County, all costs incurred in the organization of said irrigation district in case the organization shall not be effected then the above obligation to be null and void, otherwise to remain in full force, virtue and effect.

"J. GOLDMAN. [SEAL.]
"A. T. COTTON. [SEAL.]
"E. A. BRALY. [SEAL.]
"ALFRED FAY. [SEAL.]
"T. H. THOMPSON. [SEAL.]"

Endorsed: "Before the board of supervisors of Tulare Co. In the matter of the formation of Tulare irrigation district bond on behalf of petitioners. Presented and filed with the petition
50 this 1st day of July, 1889. John G. Knox, clerk, by A. H. Murray Jr., deputy. Approved July 1st, 1889. D. V. Robinson, chairman board of supervisors."

Said bond was filed with and became part of the public records of said board of supervisors and all persons were thereby notified of the character, contents and provisions thereof. The same did not constitute a bond and did not bind the purported signers thereof to the performance of any act whatever, or to the performance of any of the acts provided or contemplated by section 2 of said act; that the penal sum mentioned and provided therein is not made payable to the payee or obligee provided by law in said cases; that the

same is executed, given and delivered by the same persons whose names are signed to said pretended petition instead of by other persons not parties to said proceedings for the organization of said proposed district; and that for said reason said sureties were not competent to execute, give or deliver said or any bond required by the provisions of section 2 of said act.

For the said reasons said instrument was not a legal, valid or binding obligation or bond, nor sufficient either in form or substance within the true intent and meaning of said section 2 of said act; and the same did not confer jurisdiction or authority upon said board of supervisors to take any proceedings by reason thereof, nor to proceed to hear or act upon the petition therein referred to, nor any petition for the organization of an irrigation district; and that for said reasons, in addition to other reasons herein alleged, said board of supervisors had no jurisdiction or power to hear said or any petition for the organization of said Tulare irrigation district nor to take any proceedings whatever for the organization of said pretended irrigation district and all such proceedings so taken by said board of supervisors for the organization of said district, were and the same are illegal, null and void, and in contravention
51 of the constitutional provisions hereinbefore mentioned and of the provisions of said act and especially section 2 of said act.

XII.

Defendant alleges that the order of said board of supervisors hereinbefore set forth, attempting to establish the boundaries of said proposed district, was illegal, invalid and unauthorized, for said board thereby attempted to make certain important and material changes in the boundaries of said proposed district as the same were described and defined in and by said pretended petition and that the boundaries so attempted to be defined and established by the said board by their said order, were different from the boundaries mentioned and described in said pretended petition, and certain large bodies of agricultural land, which were included within the boundaries proposed by the said pretended petition, were not included within the, but were excluded from the, boundaries defined by said order of said board of supervisors without the consent of said petitioners and without any notice whatever to any of said petitioners or to any person or persons residing or owning real property within the boundaries defined in said pretended petition that said changes would be so made or that said proposed district, so attempted to be organized, would consist only of the real property included within the boundaries so established by said board of supervisors; and that said order in that particular and section 2 of said act, in so far as it provides for or permits said supervisors to make said changes in said boundaries on said final hearing, were and the same are in violation of section 1 of article III of the constitution of this State and of the constitutional provisions hereinbefore mentioned and referred to.

XIII.

Defendant further alleges upon its information and belief that no notice of said election was given by said board of supervisors
52 or otherwise, and said pretended location was, for said reasons unauthorized and invalid, and in violation of the constitutional provisions hereinbefore mentioned and referred to, and was without jurisdiction or process of law, and void.

XIV.

Defendant further alleges that said board of supervisors did not cause a copy of said order declaring said district organized as an irrigation district duly certified or otherwise, to be immediately or at all filed for record in the office of the county recorder of said Tulare county, and no copy of said order has ever been recorded in the office of the county recorder of said Tulare county.

XV.

Defendant further alleges that it does not appear from any of the proceedings had by said board of supervisors that any proof was made to said board of supervisors that the said organization election was held, nor was it ascertained or determined by said board that said election was in fact held, or that notice of said election was given by any one, either as required by law or at all, or, if said notice was given, by whom the same was given, nor whether said election, if held at all, was held or conducted in accordance with law and the order of said boad.

XVI.

Defendant further alleges that no other proceedings for the organization of said proposed district have ever been taken or had in any way, at any time, or at all.

XVII.

Defendant further alleges that none of the aforesaid changes in the boundaries of said proposed district is or was noted or specified in any way upon the minutes or records of said board of supervisors, nor could the same be ascertained therefrom in any other manner than as hereinbefore alleged, nor does it appear therein that any changes were so made, nor that changes so made were necessary or proper.

53 XVIII.

Defendant further alleges that a large amount of agricultural land, to wit, about thirty thousand acres, which was embraced within the boundaries defined in and by said pretended petition, was excluded by said board of supervisors by said order of July 11th, 1889, from the boundaries so attempted to be established and defined by said board, and was thereby excepted from the operation of said act, but that it was not found nor determined by the said board that the

land so excluded, nor any portion thereof, was not susceptible of irrigation by the same system of works applicable to the other lands of said proposed district, but that in truth and in fact, the same and the whole thereof was and is susceptible of irrigation by the same system of works applicable to the remaining lands of said proposed district defined in said petition, or defined by said board of supervisors.

XIX.

Defendant further alleges that for the aforesaid reasons and by reason of the facts, matters and things aforementioned, said simulated and pretended petition for the organization of said proposed irrigation district, said pretended and attempted notice of the hearing thereof, said attempted presentation thereof to said board of supervisors, said pretended bond of said petitioners, and all the proceedings of said board of supervisors aforesaid for the organization of said proposed district, were and are and each and every of them is unlawful, unauthorized, null and void, and in violation of the provisions of said act aforesaid and in contravention of the aforementioned constitutional provisions, and said Tulare irrigation district is not, therefore, and never has been legally or at all organized, nor existing, as an irrigation district, nor entitled to exercise the functions or powers, privileges or authorities of an irrigation district.

54 .

XX.

Defendant further alleges that said board of supervisors did not know that said petition, notice or bond was unlawful or unauthorized, or the proceedings aforesaid would have been taken or had by said board of supervisors for the organization of said district.

XXI.

Defendant further alleges, that, for the foregoing reasons and by reason of the foregoing facts, matters and things, said alleged and pretended irrigation district was not legally organized in accordance with the provisions of said act of March 7th, 1887, nor of any other act or law, nor at all, and was not during all or any of the time mentioned in said complaint and never has been and is not now an irrigation district. And there never have been and there are not now any officers of said alleged or pretended irrigation district and neither the several persons who are mentioned and referred to in said complaint nor any of them have at the times mentioned therein nor at any time, had any jurisdiction, power or authority of law whether to issue said alleged bonds or coupons or any of them, or any bonds or coupons whatever, and the same are and each and every of them is, and at all time- has been void, and does not constitute a legal, binding or valid obligation of said alleged or pretended irrigation district or any irrigation district and the same, so issued or pretended or attempted to be issued as alleged in said complaint, were and each and every of them was issued without due or any process of law and in violation of the provisions of said act

and of the provisions of section 13 of article I of the constitution of California, and of articles V and XIV of the amendments of the Constitution of the United States, that no person shall be deprived of property without due process of law and *contra bonas mores*.

And further answering said complaint, defendant alleges:

55 I.

That a pretended election for the alleged and pretended purpose of determining whether or not bonds of said alleged and pretended district, in the sum of five hundred thousand dollars should be issued, was pretended and attempted to be held in said pretended irrigation district by order of certain persons claiming and pretending to be and acting as directors of said district, on the 7th day of June, 1890. Said election was declared by an order of said pretended board of directors to have been carried in favor of the issuance of bonds of said district in said sum of five hundred thousand dollars. Thereafter, to wit, on the — day of June, 1890, said board of directors ordered that the bonds of said pretended district, in the sum of five hundred thousand dollars be issued in the manner and form prescribed by law, which order was then and there entered upon the minutes of said board and thereupon became and ever since has remained part of the records of said alleged board.

II.

Defendant further alleges on his information and belief, that at no time since the pretended organization of said alleged and pretended district, was a system of works or one mode of irrigation from a common source of supply ever established or located, nor was any common source of supply located or established for any irrigation system or system of irrigation works, by said pretended and alleged board of directors of said district, nor was any system of irrigation ever established for or by said alleged and pretended district and no line canals with the necessary branches therefor to irrigate the lands embraced within the said alleged and pretended district was ever fixed or determined upon by said pretended board or by any other person.

56 III.

Defendant further alleges on information and belief that none of said five hundred thousand dollars of alleged bonds of said alleged district have been used in the purchase at the par value thereof, of any lands, water rights, or other property necessary for the construction, use, supply, maintenance repair, improvement or betterment of canals or works or of lands for reservoirs for the storage of needful waters, nor have any of said alleged bonds been sold for ninety per cent. of the face value thereof, but said alleged and pretended board of directors of said alleged district have exchanged and disposed of said five hundred thousand dollars of said alleged bonds in the manner following, to wit:—

(a.) Said board of directors on or about the 1st day of January,

1891, exchanged $150,000 of the bonds of said alleged district, being 300 bonds of the denomination of five hundred dollars each, and numbered 1 to 300 inclusive, with the firm of J. Goldman & Co. for forty-five thousand dollars in cash, and a worthless water right on the St. John's river known as the Settler's ditch, and which water right from its location was wholly unavailable to irrigate any of the lands of said alleged district, and as part of the proceedings and for the purpose of making said exchange said board went through the form of advertising for bids for the bonds of said alleged district in the amount of fifty thousand dollars, for which bonds the said firm of J. Goldman & Co. bid ninety per cent. of the face or par value thereof, but said bid was made by said firm and accepted by said board with the understanding and agreement between said firm of J. Goldman & Co. and said board and as part of the consideration for said bid, that said board of directors should purchase from said firm of J. Goldman & Co. the said water right known as Settler's ditch for the sum of one hundred thousand
57 dollars, of the bonds of said alleged district.

(*b.*) That on or about the 15th day of April, 1892, the said board of directors exchanged one hundred and fifty thousand dollars of the bonds of said alleged district, being bonds number 419 to 719 inclusive, of the denomination of five hundred dollars each, for the canals, ditches and water rights claimed by the Kaweah Canal & Irrigation Company; that said board exchanged twenty thousand dollars of the bonds of said alleged district, being bonds numbered 719 to 758 inclusive, of the denomination of five hundred dollars each, for the ditches and canals claimed by the Rocky Ford Canal and Irrigation Company, which exchange was made at the same time said exchange was made for said Kaweah Canal & Irrigation Company That neither of said companies owned or possessed any water rights whatever at the time of said exchange, nor rights of way over the lands covered by any of the said canals or ditches; that said canals and ditches so purchased from the Kaweah Canal and Irrigation Company were not worth more than the sum of twenty thousand dollars, and the canals and ditches of said Rocky Ford Canal & Irrigation Company were not worth more than the sum of one thousand dollars, all of which was well known by the board of directors of said alleged district at the time of said exchanges.

(*c.*) That bonds numbered 387 to 397 inclusive, of the denomination of five hundred dollars each, were delivered to J. H. Woody and T. W. Maples on the 15th day of June, 1891, by said board of directors for labor on canals in said alleged district; that the debt for which the same was given in satisfaction was contracted for by said board of directors and said work was performed at a time when there was no money in the treasury of said alleged district applicable to the payment therefor.

(*d.*) That bonds of said alleged district numbered 341 to 386 inclusive, of the denomination of five hundred dollars each,
58 were, on the 3rd day of June, 1891, hypothecated by the board of directors of said alleged district, to the Bank of

Tulare of the city of Tulare, in this county and State, to secure the payment of a note in the principal sum of $20,250 executed by the members of said board of directors and divers other persons, which said note has been paid in full, and which bonds have not been returned to said district by said bank, nor have said bonds nor has any portion thereof ever been sold by said alleged district.

(e.) That bonds numbered 301 to 340 inclusive, 398 to 418 inclusive and 759 to 1,000 inclusive, each of the denomination of five hundred dollars, were between the 4th day of June, 1892, and the 13th day of January, 1893, delivered to one R. Linder by said board of directors at the rate of ninety per cent. of the face value of said bonds, in payment for labor on said canals and ditches.

IV.

Defendant further alleges that neither said Settler's ditch on said St. John's river nor the ditches nor canals of said Kaweah Canal & Irrigation Company nor the ditches nor canals of said Rocky Ford Canal & Irrigation Company, nor any waters thereof or flowing therein or in any of said ditches or canals or any part or parcel of them was in anywise connected with any system of irrigation that has ever been devised or adopted for said pretended district by the alleged board of directors thereof; that no notice of intention to exchange any of said bonds so exchanged for ditches or water rights or rights of way was ever given or published by said alleged board of directors or any one else; and the said exchanges of said alleged bonds so made were illegal and void and without authority of law, and in violation of the provisions of said act of the legislature, approved March 7th, 1887.

V.

59 Defendant further alleges that no notice of intention to exchange any of said pretended bonds for work or labor done or to be done on said alleged canals or ditches, was ever given or published by said board of directors of said alleged district, or any one else, and said exchanges were each of them illegal and void and without authority of law and in violation of the express provisions of the aforesaid act of the legislature of the State of California.

VI.

Defendant further alleges that all the bonds so given or delivered or exchanged for work done for said district or for said canals, ditches and pretended water rights as hereinbefore alleged, were to — taken and received at prices much less than the par value thereof; that the bonds so exchanged for labor were paid out and exchanged as aforesaid at the minimum price allowed by law for the sale thereof; that said bonds to the entire amount of five hundred thousand dollars of the par value thereof, as nearly as defendant can ascertain the same, *was* so illegally exchanged and disposed of by said board as hereinbefore alleged; that all the work so done and performed upon the canals and works of said alleged district in exchange for said bonds was contracted for and so done and per-

formed at a price therefor greatly in excess of the amount which would have been charged or received or paid therefor in cash, and for which said work could have been procured to have been done for cash, and said board of directors well knew said facts at the time of making said contracts for work and said exchanges, and that said excessive prices so paid *was* agreed upon and adopted by said board of directors and the parties to whom said bonds were delivered for the purpose and with the intention of enabling said board so to exchange said bonds for said work and for said canals and ditches, and that said persons receiving said bonds would not have entered into any agreement so made by them or any of them for performing said work in
60 exchange for bonds or in exchanging said canals or ditches or pretended water rights for said bonds, and would not have taken said bonds in payment or exchange for said work or ditches or pretended water rights except at a price much in excess of the reasonable price or value of said works and the cost for which said work could have been procured for cash, and in excess of a reasonable price or value for said canals, ditches and pretended water rights, and with a large discount from the par value of said bonds, and that said board of directors well knew said facts at the time of making said exchanges and each of them therefor; that for said reasons said alleged district and the owners of real property therein have been and are greatly damaged and injured thereby, and said exchanges of bonds as hereinbefore alleged were and the same are for said reasons, unlawful, unjust, oppressive and fraudulent, and against public policy and contrary to good morals, and in violation and in excess of the provisions of said act, and of the constitutional provisions hereinbefore referred to, and said board had no power, jurisdiction or authority to so dispose of said bonds or any of them.

VII.

Defendant further alleges that all the alleged bonds of said alleged district express upon their face that they were issued by authority of said act of March 7th, 1887, stating its title and deed of approval thereof, and in the sale, exchange or disposal of said bonds by said alleged district or board there was no warranty whatever of the validity thereof.

VIII.

Defendant alleges that none of the lands in said alleged district as the same was organized is or ever has been arid or desert or of such character that it would not produce usual and ordinary crops of ordinary vegetables, grains, cereals melons and other vege-
61 tables and fruits common to the climate thereof, or of other portions of the interior of said State or to agricultural lands elsewhere, without artificial irrigation but that on the contrary said lands for many years prior to the organization of said alleged district had been regularly cultivated and sown and planted with wheat, barley, alfalfa, orchards, vineyards, vegetables and other farm products and had heretofore produced and ever since has pro-

duced the usual fair and ordinary crops which should be produced upon the farm and agricultural lands; that said lands did not nor do the same now require artificial irrigation to make the same productive and profitable, and that for said reasons there was not at the time of the organization of said alleged district any legal or other reason or necessity for the organization of said alleged district for the purpose of artificially irrigating the lands thereof, or of any of said lands, or for the sale of the alleged bonds thereof.

IX.

For said reasons and other reasons herein alleged the organization of said alleged district, the pretended and attempted sale and exchange of the alleged bonds thereof, the levy and collection of assessments upon and against the lands of said district, and of the provisions of said act of the legislature of March 7th, 1887, so far as the same relate to said district, are and each of them is unconstitutional and void, and in violation of the provisions of articles V and XIV of the amendments to the Constitution of the United States, and of the provisions of section 13 of article I of the constitution of California, which provide that no person shall be deprived of property without due process of law, and in violation of the provisions of section 1 of article I of the constitution of California that all men have certain inalienable rights among which are those of acquiring, possessing and protecting property, and also in violation of article XIV of the amendments to the Constitution of the United States, that no State shall deny to any person within its jurisdiction the equal protection of the laws, and also in violation of the pro-
62 vision of the constitution aforesaid, that no private property shall be taken or damaged for public use without just compensation therefor.

X.

Defendant further alleges that a large portion of the land in said alleged district is not susceptible of irrigation and would not be benefitted but would be injured thereby, and the expense of preparing for irrigation such portions of said land as could — irrigated or benefitted by irrigation will be very l.. ge and disproportionate to any benefit which could be received therefrom by the owners thereof.

XI.

For the foregoing reasons the alleged system of irrigation provided for by said act and the board of directors of said district has been and is and will continue to be very unprofitable, burdensome and oppressive and the expense thereof wholly disproportionate to the benefits which have been or ever will be received by owners of real property in said district and impracticable and destructive to the interests and welfare of said people.

XII

Defendant further alleges that all the bonds of said district have been sold, exchanged and disposed of as hereinbefore alleged but

no sufficient water supply or water rights have been obtained or acquired by said district to irrigate more than one-fifth of the lands in said district in any one year, nor is there any available source of supply from which more water can be obtained; that the bonded indebtedness of said district, including the interest to grow due thereon if said bonds are valid, is nearly equal to the value of all the real property situate in said district.

XIII.

And defendant further alleges that upon the hearing of the petition for the organization of said Tulare irrigation district
63 before the board of supervisors of Tulare county as hereinbefore set forth, said board of supervisors attempted to and did establish and define the boundaries of said proposed Tulare irrigation district, but that the boundaries so established and defined by said board of supervisors and as set forth in said order so establishing the same, comprised and embraced four separate and distinct bodies of land, not contiguous to each other and which taken together did not and do not form one tract of land, and is not such a body of land as is contemplated or intended by said act of the legislature to be formed into or for an irrigation district, nor such a body of land as was petitioned to be organized into an irrigation district; and said order of said board was spread upon the minutes of said board and thereby became and ever since has continued to be a public record of said board and said county of Tulare, and all persons were notified thereby of the proposed boundaries of said district, and defendant alleges that by reason thereof, it never had and has not now any existence in fact as an irrigation district and has never had and has not now any authority to create any indebtedness or to issue any evidences of indebtedness and never had any authority to issue any of the bonds or coupons mentioned in plaintiff's complaint, or to perform any of the functions of a duly organized irrigation district; and that the act of said board of supervisors in so establishing the boundaries of said district so that it comprised four separate and distinct bodies of land not contiguous to each other, was without jurisdiction and is null and void; and the acts of the board of directors of said pretended Tulare irrigation district, in the issuance of the bonds hereinbefore mentioned and in plaintiff's complaint set forth, was without authority or power so to do, and the same are null and void.

XIV.

Defendant further alleges that the provisions of said act
64 of March 7th, 1887, in so far as the same conferred or attempted to confer upon boards of supervisors of counties in which a proposed district is situated, and especially the board of supervisors of the county of Tulare, State of California, power, jurisdiction or authority to hear the petition for the organization of the proposed irrigation district, to establish and define such boundaries as so changed to include four separate and distinct bodies of

land or otherwise, or to make an order dividing the proposed district into divisions, or to — notice of an election for the organization of such proposed district to be held therein, to hold or conduct such election, or to cast the vote thereat, to declare certain persons elected to offices in such district, to cause a certified copy of any such orders to be recorded in the office of the county recorder of each county in which any portion of the lands of such district is situated, or authorizing or permitting such board or boards of supervisors to *said* said or any other proceedings for the organization of an irrigation district, under the provisions of said act, are and each of them is unconstitutional, and void, and in conflict with the provisions of section 1 of article III and section 1 of article IV of the constitution of California for the reason that said act and said provisions thereof confer or at-empt to confer upon said boards of supervisors certain powers therein specified which can be legally exercised only by the legislature of the State, and in violation of the provisions of section 1 of article III of the constitution of California; and for the foregoing reasons, said alleged district has not and never has had any legal, valid or constitutional existence.

XV.

It is not intended by reason of any allegation or denial herein to concede or admit the legality of the organization of said alleged Tulare irrigation district, or the *de facto* or *de jure* existence
65 of any board of directors or any officers thereof, or of any bond thereof, or coupon attached thereto, at any time, or the validity of any act, bond or coupon mentioned herein or in plaintiff's complaint; but, on the contrary, expressly asserts and alleges that all and every thereof are and at all times have been wholly invalid, null and void, and imposed no obligations or liability upon the real property of said alleged district nor any of it, nor upon owners of property therein, or any of them.

And for a further and separate defense to plaintiff's complaint, defendant alleges that heretofore, to wit on the 11th day of August, 1890, the persons pretending to be the board of directors of said pretended Tulare irrigation district, pursuant to the provisions of an act of the legislature of the State of California, approved March 16th, 1889, known as the "confirmation act," filed in the superior court of the county of Tulare, State of California, a petition whereby said petitioners represented that said Tulare irrigation district was on or about the second day of September, 1889, duly organized as an irrigation district by the board of supervisors of said Tulare county under an act of the legislature of the State of California, approved March 7th, 1887, and that ever since such organization it had claimed in good faith to be and had existed as an irrigation district.

That the first board of directors of said district was duly elected under the provisions of said act; that at an election held on the 2nd day of April, 1890, J. W. Mackie, A. P. Merritt, W. B. Cartmill, E. De Witt, and J. F. Ginson were elected members of the board of directors of said district, and at such time constituted such board of

directors; that all the lands of said district were situated within Tulare county;

That the board of directors on or about the 12th day of May, 1890, estimated and determined the amount of money necessary to be raised by said district for the purpose of constructing the
66 canals and works necessary for the irrigation of the land of said district, and for water and water rights; and that said board estimated the sum of five hundred thousand dollars was necessary to be raised for said purposes, and determined that it was necessary that bonds of said district in the amount of said five hundred thousand dollars be issued and the same be sold in order to raise the money necessary for said purposes, provided the qualified electors should vote in favor of the issue of said bonds;

That said board called a special election at which should be submitted the question whether or not such bonds of said district should be issued in the amount so determined by said board; and that said election be held on the 7th day of June, 1890, and ordered that notices thereof be given by posting the same in each election precinct in each district, and also by publication in the "Weekly Tulare Register;" that notices of said election were posted and published as ordered by said board; that such election was in fact held in said district and conducted in conformity with the provisions of said act and the *the* returns from such election were filed in the office of said board of directors, and that on the 9th day of June, 1890, said board of directors canvassed such returns and ascertained therefrom and found and declared as the result of such election that 398 votes were cast at said election, and that 348 thereof were in favor of said issue of said bonds, and that 50 votes were cast against such issue of said bonds.

That said board caused the result of such election to be entered upon its minutes, and on the 1st day of July, 1890, ordered that the bonds of said district in said sum of five hundred thousand dollars be issued in the manner and form prescribed by law; that each of said bonds should be of the denomination of five hundred dollars, and should have attached thereto coupons for the instalments of the principal and for the semi-annual payment of the interest; that said bonds should be dated the same day and should state the date of its maturity, and stating therein the form
67 of said bonds and coupons for instalments of principal and coupon for interest and that one thousand thereof be prepared, executed and issued in such manner and form; and that thereafter on the 6th of August, 1890, said board of directors by its order declar*ing* its intention to sell said bonds in the amount of two hundred thousand dollars on the 17th day of November, 1890; that none of the said bonds had been sold but that all of the same remained unsold and praying that the proceedings for the issue and sale of said bonds be judicially examined, approved and confirmed by said court, and which proceedings was entitled "In the matter of Tulare irrigation district."

And thereafter, to wit on the — day of May, 1898, B. W. Jauchius, J. L. Gould, George G. Kelly, and Ralph Jones, by leave of court

had, filed their answer to said petition, denying that said irrigation district was duly organized as an irrigation district by said board of supervisors, and denying that it had claimed in good faith or otherwise to be an irrigation district; and alleging that the petition presented to the board of supervisors of said Tulare county, for the formation of said district was not signed by fifty nor by a majority of, the freeholders owning land in said pretended district;

That no notice of the time of the meeting at which said petition would be presented to said board of supervisors was ever given; that said board of supervisors, in violation of the express provisions of said act authorizing the formation of said district, changed the proposed boundaries so as to exclude fully thirty thousand acres of land susceptible of irrigation from the same system of works applicable to the other lands in said proposed district; and that upon the hearing of said petition, said board of supervisors defined the boundaries of such proposed district so that the same comprised and embraced four separate and distinct bodies of land not contiguous to each other and which was not such a body of land as is contemplated or intended to be organized as an irrigation district;

68 that said board of supervisors did not cause a copy of its order declaring the territory petitioned for organized as an irrigation district, to be filed for record in the office of the county recorder of Tulare county;

And denying that the board of directors of said district at any time estimated or determined the amount of money necessary to be raised by the said district for the purpose of constructing canals and works necessary for the irrigation of the lands of said district or for acquiring water or water rights therefor;

And denying that said board at any time estimated the sum of five hundred thousand dollars was necessary to be raised for such purposes; and alleging that at no time had the board of directors of said district estimated or determined the amount of money necessary to be raised by said district for the purposes of constructing canals and works necessary for the irrigation of the lands of said district, and for acquiring water and water rights therefor;

And alleging that at no time had its board of directors ever established or located or adopted any system of works for a mode of irrigation for the lands of said district from a common source of supply; and alleging that no plans or specifications for any system of irrigation or irrigation works were ever made whereby an estimate could be made by said board:

And alleging that said board of directors did not estimate that the sum of five hundred thousand dollars or any other sum would be necessary to be raised for the purposes mentioned in said petition; and denying that said board of directors ever determined that it was necessary or proper that bonds of said district to the amount of five hundred thousand dollars should be issued by said district or sold, in order to raise the amount of money necessary for said purposes;

69 And alleging that said board of directors did not at any time determine t-at it was necessary or proper that the bonds

of said district in the sum of five hundred thousand dollars be issued or sold to raise the money necessary for the purpose of constructing canals and ditches:

And alleging that said B. W. Jauchius, J. L. Gould, George G. Kelly, and Ralph Jones had been ever since the organization of said district and were at the time of the filing of their answer therein, owners of real estate within the boundaries of said district; and praying that the approval and confirmation of the proceedings had by said board of directors as aforesaid, and as alleged in said petition, be denied and that a decree be had adjudging said district illegally organized and void;

And thereafter such proceedings were had in said matter of Tulare Irrigation District, that on the 23rd day of November, 1898, there was entered therein the following order, to wit:

"In the Superior Court of the State of California in and for the County of Tulare.

"In the Matter of the Tulare Irrigation District.

"This cause came on regularly for hearing by stipulation of the parties hereto and the order of the court before said court on the 17th day of June, 1898, said board of directors petitioners herein appearing by E. W. Holland, as its attorney, and the defendants B. W. Jauchius, J. L. Gould, George G. Kelly and Ralph Jones, appearing herein by their attorneys C. L. Russell and G. W. Zartman; and the cause having been tried on said 17th day of June, 1898, by the court without a jury, and the testimony both oral and documentary, havin- been heard and t-e case having been submitted to the court for decision, and the court having made and filed its findings of fact and conclusions of law, and its order for judgment, entered in accordance therewith in favor of said defendant.

70 "Wherefore by reason of the law and the findings and order aforesaid it is ordered, adjudged and decreed:

"That the said Tulare irrigation district never was and is not now duly or legally organized by the directors of the board of supervisors of Tulare county on or about the second day of September, 1889, nor at any other time, and the same is not now a duly or legally organized irrigation district;

"That the first board of directors of said irrigation district were not duly or legally organized;

"That all the proceedings of said board of supervisors under and by virtue of which said irrigation district was organized and first board of directors of said district was elected are null and void, and approval of the same is hereby denied.

"And it is further ordered adjudged and decreed:

"That all the proceedings had by or under the authority and direction of the board of directors of said Tulare irrigation district for the purpose of the issuance and sale of the bonds of said district to the amount of $500,000.00 are null and void, and approval of the same is hereby denied.

"And it is further ordered, adjudged and decreed that the said

Tulare irrigation district ever since its attempted organization on or about the second day of September, 1889, as aforesaid, has never been and is not now a legally organized irrigation district; that it has never possessed and does not now possess any power or authority to issue or sell bonds of said district, create indebtedness, or perform any of the functions, franchises, or other acts of an irrigation district.

"And it is further ordered that petitioners pay the costs herein.

"WHEATON A. GRAY,
"*Judge of the Superior Court.*

"Dated this November 23rd, 1898."

71 And for a further and separate defense, defendant alleges that the said bonds and every part thereof and the other coupons therein sued upon, are and each and every of them is barred by the provisions of subdivision 1 of section 338 of the Code of Civil Procedure; and that said bonds and every part thereof and the other coupons therein sued upon are and each and every of them is barred by the provisions of section 337 of the Code of Civil Procedure.

Defendant is advised and believes and so alleges that if the judgment of the court is adverse to plaintiff and it is found and determined by the court herein that the bonds and coupons mentioned and described in said complaint, are or any of them is invalid, said plaintiff, unless restrained by order of this court, will transfer the same to some other person or persons for collection or otherwise, and said defendant will receive no benefit or advantage from said judgment but will thereafter be compelled to litigate the same matters involved herein with successive holders thereof from time to time hereafter and will be greatly and unlawfully harassed, annoyed, vexed, injured, damaged and involved in a multiplicity of suits and actions for the prevention of the collection thereof.

Wherefore defendant prays:

1. That plaintiff take nothing by this action.

2. That plaintiff be required by the judgment herein to deliver to the court all and singular the bonds mentioned in his complaint and all coupons and instalments of principal attached thereto, and all other coupons mentioned in his complaint, for cancellation, and that it be adjudged and decreed that the same are, and each and every of them is illegal, unlawful, null and void, and that the same be cancelled and destroyed and plaintiff be perpetually enjoined and restrained from transferring or circulating the same or
72 asserting the same or any of them against said alleged district.

3. For its costs of suit herein.

4. For such other and further relief as may be meet in the premises.

C. L. RUSSELL,
G. W. ZARTMAN,
Attorneys for Defendant.
JOHN GARBER,
GEORGE H. MAXWELL,
Of Counsel.

STATE OF CALIFORNIA, } ss:
County of Tulare, }

G. Q. Gill, being duly sworn, deposes and says: That he is one of the acting directors of the defendant named in the foregoing answer; that he has heard read the said answer, and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on information and belief; and that as to those matters he believes it to be true.

C. Q. GILL.

Subscribed and sworn to before me this 29th day of May, 1899.

C. L. RUSSELL,
Notary Public in and for the County of Tulare, State of California.

[SEAL.]

(Ten-cent revenue stamp canceled.)

(Endorsed:) No. 859 In the superior court of Tulare county, State of California. Alfred Shepard plaintiff *vs.* Tulare Irrigation District, defendant Answer. Filed May 31 1899 Wm. M. Van Dyke clerk Chas. N. Williams, deputy G. W. Zartman Calvin L. Russell Tulare, Cal., attorneys for defendant.

73 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant.

STATE OF CALIFORNIA, } ss:
County of Santa Clara, }

Wm. T. Aggeler, being duly sworn, deposes and says that at the times hereinafter mentioned, he was a citizen of the United States and a resident of the county of Santa Clara, State of California, and not interested in the service of the papers hereinafter mentioned; that on the 30th day of September, 1899, at the said county of Santa Clara, State of California, he served the notice of motion of B. W. Jauchius and George G. Kelly, by their attorneys, C. L. Russell and G. W. Zartman, in above-entitled action, and in said action also served therewith the affidavits of G. Q. Gill, C. H. Slaughter and J. M. Slinkard, which notice of motion and affidavits are hereto attached and made part hereof on S. F. Leib, Esq., attorney for plaintiff in said action, by delivering to and leaving with said S. F. Leib, Esq., a true copy of said notice of motion, and a true copy of said affidavits, at the time and place aforesaid.

WM. T. AGGELER.

Subscribed and sworn to before me this 2nd day of October, 1899.

[SEAL.]

H. E. WILCOX,
Notary Public in and for the County of Santa Clara, State of California.

74 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff.
vs.
TULARE IRRIGATION DISTRICT, Defendant.

STATE OF CALIFORNIA, *County of Tulare*, } ss:

G. Q. Gill, C. H. Slaughter and J. M. Slinkard, being duly sworn, each for himself deposes and says: That he is now and for more than two years last past has been a director of Tulare Irrigation District.

That said district is the defendant in the above-entitled cause, and that said cause is set for trial in said court on October 17th, 1899.

That the defendant has no funds of any description with which to meet the expenses and costs incident to the trial of said cause, or to make a proper defense thereto, and said district cannot make a proper defense to said action for said reason.

Deponent further states that said defendant will have no money to pay the expenses of an appeal, or to further prosecute said action in the event a judgment is rendered in favor of plaintiff herein.

That no part of the expenses already incurred in the defense of said action has been paid by said defendant for aforesaid reason, but such costs have been contributed by individual tax-payers of the said district, without any agreement by said defendant that they will be reimbursed therefor.

That although the amount involved in said action is small yet a decision therein practically settles the validity of about
75 $175,000 of the bonds issued by defendant, as an outstanding indebtedness against it.

That the board of directors of defendant, being responsible for the management of said cause, are unwilling that the defense of said action should be controlled by any other than themselves, unless other parties are permitted to intervene herein and defend said action upon their own responsibility in conjunction with defendant.

G. Q. GILL.
C. H. SLAUGHTER.
J. M. SLINKARD.

Subscribed and sworn to before me this 28th day of September, 1899.

[SEAL.]

C. L. RUSSELL,
Notary Public in and for the County of Tulare, State of California.

76 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant.

The plaintiff in the above-entitled action, and S. F. Leib, Esq., his attorney of record, will please take notice that B. W. Jauchius and George G. Kelly, by their attorneys, C. L. Russell, G. W. Zartman, George H. Maxwell, and John Garber, will, on Monday, the 9th day of October, 1899, at the hour of ten o'clock a. m., or as soon thereafter as counsel can be heard, at the court-room of the above-entitled court, in the city of Los Angeles, State of California, move the court for an order permitting said B. W. Jauchius and George G. Kelly to intervene in the above-entitled action as a party therein, and unite with the defendant in resisting the claims of the plaintiff in such action.

Said motion will be made upon the affidavits of G. Q. Gill, C. H. Slaughter and J. M. Slinkard, and the proposed complaint in intervention, copies of which affidavits and proposed complaint are served herewith and hereto annexed, and upon the files, records and entire proceedings in said action.

Said motion will be based upon the grounds that said B. W. Jauchius and George G. Kelly are interested in the matter in litigation in said action, and in the success of the defendant therein; and upon the further ground that the defendant in said action is, for want of funds, unable to make any defense therein.

C. L. RUSSELL,
G. W. ZARTMAN,
Attorneys for Defendant.
GEORGE H. MAXWELL,
JOHN GARBER, *Of Counsel.*

77 (Endorsed:) No. 859 In the superior court of Tulare county, State of California. Alfred Shepard plaintiff *vs.* Tulare Irrigation District defendant Notice and affidavit. Filed Oct. 4 1899 Wm. M. Van Dyke clerk G. W. Zartman Calvin L. Russell Tulare, Cal. attorneys for intervenors—

78 At a stated term, to wit, the August term, A. D. 1899, of the circuit court of the United States of America, of the ninth judicial district, in and for the southern district of California, held at the court-room in the city of Los Angeles on Monday the ninth day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable Olin Wellborn, district judge.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant. } No. 859.

This cause coming on this day to be heard on the petition of B. W. Jauchius and George G. Kelly, for an order permitting said B. W. Jauchius and George G. Kelly to intervene in the above-entitled action, as parties defendant therein and unite with the defendant in resisting the claim of the complainant therein, F. W. Burnett, Esq., appearing on behalf of complainant's counsel, and C. L. Russell, Esq., appearing as counsel for petitioners and said matter having been argued by said counsel, it is ordered that said petitioners' complaint in intervention be filed herein, and the same thereupon is filed herein, without prejudice to plaintiff's motion to strike the said complaint in intervention out, if he shall be so advised.

79 I, Wm. M. Van Dyke, clerk of the circuit court of the United States, for the southern district of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said court October 9th, 1899, in the cause entitled Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, defendant, No. 859, and remaining of record therein.

Attest my hand and the seal of said circuit court, this 30th day of March, A. D. 1901.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 859 U. S. circuit court ninth circuit, southern district of California. Alfred Shepard *vs.* Tulare Irrigation District. Certified copy order permitting filing of complaint in intervention Filed Mar. 30 1901 Wm. M. Van Dyke clerk

80 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant.

STATE OF CALIFORNIA,
County of Santa Clara, } *ss.:*

Wm. T. Aggeler, being duly sworn, deposes and says, that at the times hereinafter mentioned, he was a citizen of the United States and a resident of the county of Santa Clara, State of California, and not interested in the service of the papers hereinafter mentioned; that on the 30th day of September, 1899, at the said county of Santa Clara, State of California, he served the proposed complaint in intervention of B. W. Jauchius and George G. Kelly, in the above-entitled action, which complaint in intervention is hereto annexed and made part hereof, on S. F. Leib, Esq., attorney for plaintiff in said action, by delivering to and leaving with said S. F. Leib, Esq.,

a true copy of said complaint in intervention, at the time and place aforesaid.

WM. T. AGGELER.

Subscribed and sworn to before me, this 2nd day of October, 1899.

[SEAL.] H. E. WILCOX,
Notary Public in and for the County of Santa Clara, State of California.

81 In the Circuit Court of the United States, Ninth Circuit, in and for the Southren District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant; GEORGE G. KELLY and B. W. Jauchius, Intervenors.

Now comes George G. Kelly and B. W. Jauchius and by leave of court first had, file this their complaint in intervention in the above-entitled cause, and for grounds thereof allege and deny as follows, to wit:

I.

That said George G. Kelly is a citizen of the United States and a resident of the State of Massachusetts; that he is now and ever since the 1st day of January, 1889, has been the owner of the following-described land, situate within the boundaries of Tulare county, State of California, and within the boundaries of the alleged Tulare irrigation district, to wit, the south half of section thirty-three (33), township nineteen (19) south, range twenty-four (24) east, Mount Diablo base and meridian.

That said B. W. Jauchius is a citizen of the United States and a resident of the State of California; and ever since the 1st day of January, 1889, has been the owner of the following-described real property situate in said Tulare county and within the boundaries of said alleged Tulare irrigation district, to wit: Lots twenty-four (24) and twenty-five (25), block eighty-six (86); lots eleven (11) to sixteen (16), block seventy (70), Tulare city.

That each of said intervenors *are* interested in the subject-
82 matter of this action and in the success of the defendant herein in this: that if the bonds and coupons mentioned in plaintiff's complaint, are adjudged a valid claim against said alleged district, then the property of intervenors in said district will be assessed and taxes levied thereon to pay the claim of said plaintiff.

II.

Denies that defendant is or at any time mentioned in said complaint was or ever has been an irrigation district duly or otherwise incorporated under the laws of the State of California as an irrigation district under and pursuant to, or under or pursuant to, the provisions of an act of the legislature mentioned in said complaint, or

any other act of the legislature of the State of California, and denies that the defendant is or ever was a corporation.

III.

Denies that defendant ever since the 2nd day of July, 1889, or any other time, has been, or that it now is acting as such or any corporation, under such or any act of the legislature of said or any State, or otherwise or at all, or under the acts or any act of the legislature of said or any State amendatory thereof, or otherwise, or supplemental thereto or otherwise or at all, with its principal or any place of business in the county of Tulare, State of California, or elsewhere, or with the office of said or any corporation in said county of Tulare, except as hereinafter stated; denies that all or any of the lands embraced in the corporate or any limits of said corporation are or at any time have been within said county of Tulare in the State of California, except as hereinafter set forth.

IV.

Denies that in the month of May, 1890 or at any other time, the board of directors of defendant, pursuant to the provisions of said or any acts of said legislature, or otherwise or at all, estimated
83 and determined, or estimated or determined the amount of money necessary to be raised for the purpose of constructing the necessary or any irrigation canals and works or canals or works, or acquiring the necessary or any water and property and rights, or water or property or rights therefor, or of otherwise or at all carrying out the provisions of said or any acts, or estimated and determined, or estimated or determined, the amount of money necess-ry to be raised therefor or otherwise or at all to be the sum of $500,000 or any other sum; and denies that said board, immediately or otherwise, called a special or any election of the electors of said district at which should be submitted to such or any electors possessing the qualifications prescribed by said or any act or at all whether or not the bonds of said district should be issued in the amount so or otherwise determined of $500,000 or any other sum, except as hereinafter set forth.

V.

Denies that notice of such or any election was given by posting in three or any other number of public places in each or any election precinct of said district, for twenty or any other number of days, or by publication of said or any notice in any newspaper published in said county or elsewhere, or where the office of said board of directors of said district was required to be kept in the county of Tulare or elsewhere, once a week for three or any number of successive weeks or at all, or that said or any notices so posted and published, or so posted or published, specified the time of holding of such or any election, and the amount of bonds so or otherwise or at all proposed to be issued, except as hereinafter set forth.

VI.

Denies that at said election a majority or any other number of the votes cast were in favor of the bonds being issued to the
84 amount of $500,000 or in any other amount or at all, except as hereinafter stated.

VII.

Denies that thereupon or at any other time, or at all, the board of directors of said defendant caused the bonds of said defendant, in the amount of $500,000 or any other sum, or at all to be issued, except as hereinafter stated;

Denies that each of said or any bonds was for the principal sum of five hundred dollars, or any other number of dollars, or that the same were numbered consecutively or otherwise, or at all, from one to one thousand inclusive, or otherwise or at all, except as hereinafter stated;

Denies that all or any of said bonds, with the exception of said numbers, were all of precisely like tenor and form, or were at all of like tenor and form, or of like tenor or form, or were signed by the president and secretary, or by the president or secretary of said defendant, or that the seal of said board of directors was affixed to each or any of said bonds, except as hereinafter set forth.

VIII.

Denies that coupons for the payment of the interest payable on each or any of said bonds were attached thereto, or were signed by the secretary of defendant, except as hereinafter stated.

IX.

Denies that thereafter or at any other time, any part of said or any bonds were by the defendant or its board of directors sold, issued and delivered, or sold, issued or delivered, for ninety per cent. or any per cent. of their par value, or that the proceeds thereof were used for the construction of canals and irrigation works, or for the construction of canals or irrigation works for defendant; and denies that the remaining or any part of said or any bonds were exchanged, issued and delivered, or exchanged, issued or delivered, by
85 the defendant or its board of directors at their par value, for the conveyance to said district of water, water rights and other property for irrigation purposes, or for the conveyance of water, water rights or other property for irrigation purposes; and denies that defendant has thereby or otherwise been enabled to or has irrigated the lands of said district.

X.

Allege that they have no information, knowledge or belief as to the matters alleged in the second paragraph of page "4" of plaintiff's complaint, and upon that ground, deny that the parties who received the bonds and coupons or the bonds or coupons in said com-

plaint specifically numbered, upon such or any sale or exchange, by said district, sold, transferred and delivered, or sold or transferred or delivered said bonds and coupons or said bonds or coupons, to innocent or *bona fide* purchasers for the full value thereof, or for any value;

And deny that such or any purchasers last aforesaid or otherwise, so or otherwise or at all purchased said bonds and coupons, or said bonds or coupons, or so or otherwise or at all took or received the same for the full or any value thereof, then or at any other time or at all paid by them therefor in the usual or any course of business or at all, before any or all of them were due or dishonored, or in good faith or without full notice of all defects and invalidity of the same and of all of them, and of the title to them and all of them of the party and parties from whom they so received the same.

XI.

Deny that the defendant paid regularly or otherwise or at all as they fell due or at any other time the first eleven or any other number of instalments of interest in said bonds represented by said coupons mentioned in said complaint or otherwise or at all, except as hereinafter set forth.

86 XII.

Allege that intervenors have no knowledge, information or belief as to the matters stated in the first paragraph on page "6" of plaintiff's complaint, and upon that ground, intervenors deny that all of said or any unpaid coupons mentioned upon pages "5" and "6" of said complaint, were transferred or delivered to plaintiff previous to October 1st, 1896, or that plaintiff has ever since been absolute or any other owner, holder and bearer thereof, or the owner or holder or bearer thereof at all or that plaintiff bought a part of said unpaid coupons before their maturity, in good faith, or otherwise or at all, or in the usual course of business or otherwise or at all, or paid therefor their full or any value without full notice of all defects and invalidity of the same and all of them, and the title to them and all of them, by the party and parties from whom he purchased them.

And on the same ground deny that the remainder of said unpaid coupons were transferred to plaintiff as aforesaid or otherwise or at all by parties who had purchased the same or any of them before their maturity in good faith or otherwise or at all, in the usual or any other course of business or at all, *in the usual or any other course of business or at all*, or paid therefor their full value without full notice of all defects and invalidity of the same and all of them, and the title to them and all of them, of the party and parties from whom they so purchased them and all of them; and upon such grounds deny that said coupons bought by the plaintiff before their maturity or otherwise or at all are those attached to the bonds numbered in said paragraph on page "6" of said complaint.

And for a further answer and defense to said complaint intervenors allege:

87 I.

That on or about the first day of July, 1889, a certain simulated and pretended petition was pretended and attempted to be presented to the board of supervisors of the county of Tulare, State of California, at a regular meeting of said board which said simulated and pretended petition was in the words and figures following, to wit:

"*Petition.*

"To the honorable the board of supervisors of the county of Tulare, State of California:

"The undersigned, your petitioners herein, respectfully represent to your honorable body that we are freeholders owning land within the following-described district, all of which is situated within Tulare county; that we desire to provide for the irrigation of the same; that all of said proposed district as hereinafter described, is susceptible of one mode of irrigation from a common source and by the same system of works; that is to say, by conveying the waters of Kaweah river by means of dams thereon and by main and distributing canals therefrom.

"We therefore petition your honorable body and pray that said hereinafter-described district be organized an irrigation district under an act of the legislature of the State of California, entitled, 'An act to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes,' approved March 7, 1887.

"The boundaries of said proposed district are as follows:

"Commencing at the northeast corner of section twelve (12) in township nineteen (19) S, range twenty-four (24) E; thence south one (1) mile to the northeast corner of section thirteen (13), township nineteen (19) S, range twenty-four (24) E; from
88 thence east two (2) miles to the northeast corner of section seventeen (17), township nineteen (19) S, range twenty-five (25) E; from thence south three (3) miles to the southeast corner of section twenty-nine (29), township nineteen (19) S, range twenty-five (25) E; from thence west one (1) mile to the southwest corner of section twenty-nine (29) last aforesaid; from thence south four (4) miles to the northwest corner of section twenty (20) township twenty (20) S, range twenty-five (25) E; from thence east one (1) mile to the northeast corner of said section twenty (20) last aforesaid; from thence south three (3) miles to the southeast corner of section thirty-two (32), township twenty (20) S, range twenty-five (25) E; from thence west to the northeast corner of section five (5), township twenty-one (21) S, range twenty-five (25) E; from thence south two (2) miles to the southeast corner of section eight (8), township twenty-one (21) S, range twenty-five (25) E; from thence west

ten (10) miles to the southwest corner of section eleven (11), township twenty-one (21) S. range twenty-three (23) E; from thence north two (2) miles to the northwest corner of section two (2), township twenty-one (21), S, range twenty-three (23) E; from thence east to the southwest corner of section thirty-one (31), township twenty (20) S, range twenty-four (24) E; from thence north one and one-half (1½) miles to the southeast corner of the northeast quarter (¼) of section twenty-five (25), township twenty (20) S, range twenty-three (23) E; from thence west to the southwest corner of the northwest quarter (¼) of said section twenty-five (25) last aforesaid; from thence south one-half (½) mile to the southeast corner of section twenty-six (26), township twenty (20) S, range twenty-three E; from thence west one (1) mile to the southwest corner of said section twenty-six (26) last aforesaid; from thence north two (2) miles to the northwest corner of section twenty-three (23), township twenty (20) S, range twenty-three E; from thence east two and one-half (2½) miles to the southwest corner of the southeast quarter
89 (¼) of section eighteen (18), township twenty (20) S, range twenty-four (24) E; from thence north one-half (½) mile to the northwest corner of the southeast quarter (¼) of said section eighteen (18) last aforesaid; from thence east one (1) mile to the southwest corner of the northeast quarter (¼) of section seventeen (17), township twenty (20) S, range twenty-four (24) E; from thence north three-fourths (¾) of a mile to the northwest corner of the southwest quarter (¼) of the southeast quarter (¼) of section eight (8), township twenty (20) S, range twenty-four (24) E; from thence east three-fourths (¾) of a mile to the northwest corner of the southeast quarter (¼) of the southwest quarter (¼) of section nine (9), township twenty (20) S, range twenty-four (24) E; from thence north one-fourth (¼) mile to the northwest corner of the northeast quarter (¼) of the southwest quarter (¼) of said section nine (9) last aforesaid; from thence east one-fourth (¼) mile to the northwest corner of the southeast quarter (¼) of said section nine (9) last aforesaid; from thence north one-half (½) mile to the northwest corner of the northeast quarter (¼) of said section nine (9) last aforesaid; from thence west two and one-half (2½) miles to the southwest corner of section six (6), township twenty (20) S, range twenty-four (24) E; from thence south one-half (½) mile to the southeast corner of the northeast quarter (¼) of section twelve (12) township twenty (20) S, range twenty-three (23) E; from thence west one-half (½) mile to the southwest corner of the northeast quarter (¼) of said section twelve (12) last aforesaid; from thence south one-half (½) mile to the southeast corner of the southwest quarter (¼) of said section twelve (12) last aforesaid; from thence west one-half (½) mile to the southwest corner of said section twelve (12), last aforesaid; from thence south one-half (½) mile to the southeast corner of the northeast quarter (¼) of
90 section fourteen (14), township twenty (20) S, range twenty-three (23) E; from thence west one (1) mile to the southwest corner of the northwest quarter (¼) of said section fourteen last aforesaid; from thence south one-half (½) mile to the southeast corner of section fifteen (15), township twenty (20) S, range twenty-

three (23) E; from thence west one-half (½) mile to the southwest corner of the southeast quarter (¼) of said section fifteen (15) last aforesaid; from thence north one (1) mile to the northwest corner of the northeast quarter (¼) of said section — (15) last aforesaid; from thence east one-half (½) mile to the northeast corner of said section fifteen (15) last aforesaid; thence north one (1) mile to the northwest corner of section eleven (11) twp. twenty (20) S range twenty-three (23) E; from thence east one (1) mile to the northeast corner of said section eleven (11), last aforesaid; from thence north one (1) mile to the southwest corner of section thirty-six (36), township nineteen (19) S, range twenty-three (23) E; from thence west along the township line about two and one-half (2½) miles to the west line of the swamp and overflowed land on Packwood creek; from thence northeasterly along the meandering west line of said swamp and overflowed land to the northeast corner of the southeast quarter (¼) of section thirteen (13), township nineteen (19) S, range twenty-three (23)E; from thence north to the northwest corner of section eighteen (18), township nineteen (19) S, range twenty-four (24) E; from thence east three (3) miles to the northwest corner of section fifteen (15), township nineteen (19) S, range twenty-four (24) E; from thence north one (1) mile to the northwest corner of section ten (10), township nineteen (19) S, range twenty-four (24) E; from thence east three (3) miles to the northwest corner of section twelve (12),
91 township nineteen (19) S, range twenty-four (24) E; the place of beginning.

"We respectfully request that said district be designated as the Tulare irrigation district."

	No. of acres.		No. of acres.
" 1. J. Goldman	900	J. W. Stufflebeem	180
" 2. J. C. Gist	80	J. B. Zumwalt	900
" 3. William Bruce	160	H. H. Francisco	40
" 4. C. H. Nelson	12½	F. Rosenthal	36
" 5. E. Lathrop	320	J. W. Dunlap	40
" 6. C. A. Hitchcock	80	Thos. H. Thompson	720
" 7. Geo. F. Trescott	100	S. S. Ingham	400
" 8. Jos. Kerkner	80	J. I. Bachelder	130
" 9. T. J. Gist	160	Frederick H. Wales	278
" 10. Z. H. Morris	40	Joseph Merritt	160
" 11. Alfred Fay	160	J. O. Lovejoy	50
" 12. George Hewitt	226	J. W. Mackie	160
" 13. B. Noussitou	260	James Stewart	180
" 14. W. A. Jacobs	494	W. I. Burnett	1091
" 15. W. H. Coggleshell	120	W. H. Alford	32
" 16. J. W. Chinowith	84	M. H. Patten	160
" 17. W. F. Cartmill	150	P. D. Fowler	90
" 18. J. B. Hamilton	159	R. N. Haugh	243
" 19. Sam. Newell	320	C. Dunning	93
" 20. Rob't Newell	160	Anson P. Hall	20
" 21. John W. Hooper	680	John M. Ginley	507
" 22. E. J. Hodges	80	Luke F. Warren	480
" 23. J. T. Chism	180	Amos Hicks	10
" 24. W. F. Stewart	160	E. A. Braly	40
" 25. S. Fowler	200	M. M. Burnett	500
" 26. I. A. Moorehead	240	S. A. Blythe	20
" 27. Eva M. Moody	80	O. S. Woodruff	20

	"28. John A. Goble.....	40	H. K. Ayer.....		32
92	"29. Sam. Richardson...	250	S. Weaver.....		380
	"30. B. M. Alford.....	40	A. W. Stewart.....		80
"31.	A. T. Cotton.....	320	O. B. Taylor.....		32
"32.	R. H. Parrish.....	160	B. G. Parker.....		
"33.	W. E. Brown.....	160	J. H. Aten.....		80
"34.	E. T. Cosper.....	160	C. G. Hough.....		240
"35.	W. H. Hillhoren.....	160	D. O. Hammon.....		180
"36.	C. S. Jordon.....	320	J. W. Davis.....		30
"37.	John C. Hawkins.....	80	E. Oakford.....		180
"38.	H. E. Dye.....	160	John G. Eckles.....		3
"39.	Theo. Harris.....	80	A. W. De Witt.....		20
"40.	E. W. Dutcher.....	40	A. A. Hall.....		40
"41.	J. F. Boller.....		J. H. Stufflebeem.....		480
"42.	B. F. Moore.....	300	R. T. McMillan.....		32
"43.	William Swall.....	160	G. W. Conner.....		5
"44.	Jesse Richardson.....	60	R. S. Hill.....		145
"45.	Amos Roberts.....	779	E. M. De Witt.....		640
"46.	E. Nolfskill.....	779	J. M. Hart.....		30
"47.	R. B. Snell.....	100	Clulli Averill.....		60
"48.	H. S. Haseltine.....	140	F. M. Schultz.....		5
"49.	Mary L. Smith.....	342	G. W. Kirkes.....		80
"50.	J. E. Carter.....	80	C. H. Randell.....		160
"51.	Wm. Carpenter.....	225	Wm. Dobson.....		7
"52.	A. T. Fowler.....		Thomas Dobson.....		22
"53.	Sol Ephraim.....	720	T. W. Maples.....		
"54.	L. E. Schoenemann.....		Frank P. Taylor.....		
"55.	A. J. Pillsbury.....		H. A. Charters.....		
"56.	Chas. M. Hatch.....		Miles Ellsworth.....		
"57.	H. Frank Tandy.....	10	G. Q. Gill.....		
"58.	S. D. Ayers.....	170	L. H. Stokes.....		7
"59.	S. Bowles.....		J. A. Allen.....		
	"60. I. H. Hamm.....		E. W. Holland.....		
93	"61. L. Schoenfeld.....		R. K. Ham.....		
	"62. R. Linder.....		R. S. Black.....		
"63.	J. M. Alexander.....	170	Sam'l T. Alexander.....		1890
"64.	D. W. Madden.....		R. Chandler.....		135½
"65.	E. T. Bucknam.....		T. Bacigalupi.....		320
"66.	S. Witkowski".....				

And said simulated and pretended petition was then and there filed, and ever since then has been and is now one of the public records of said board of supervisors, and of said Tulare county. That no other petition for the organization of said alleged and pretended Tulare irrigation district has ever been presented to, or filed with, said board of supervisors.

II.

For two weeks next preceding said time, to wit, during the month of June, 1889, said pretended petition was printed and published in a newspaper printed and published in said county of Tulare, namely, the "Tulare Weekly Register."

III.

That during the same period of time last mentioned there was printed and published in said newspaper and immediately following and below said pretended petition in the same column of said paper the following words and figures, to wit:

"*Notice.*

"Pursuant to the statutes in such cases made and provided notice is hereby given that the above and foregoing petition will be presented to the board of supervisors in and for the county of Tulare at their first regular meeting in the month of July, 1889, to wit, on Monday the 1st day of July, 1889, at which time any person or persons desiring so to do may present their objections, if any they have, why said petition should not be granted."

No other notice whatever of the hearing of said or any
94 simulated petition or of any purported petition for the organization of said Tulare irrigation district was ever given or published, either by said pretended petitioners or otherwise.

IV.

Said purported and pretended notice was not signed by said petitioners or any of them or by any one, and the same did not specify any place where the petition therein referred to or any petition would be presented; and the same, for said reasons in addition to other reasons herein alleged, was illegal, null and void and constituted no notice whatever nor any process of law, and the same and all the proceedings subsequent thereto, and vased and founded thereon which are herein alleged were and are, and each and every one of them is and was, without jurisdiction, and void and in violation of section 13 of article I of the constitution of this State, and of articles V and XIV of the amendments of the Constitution of the United States that no person shall be deprived of property without due process of law.

V.

Said simulated and pretended petition did not designate nor specify either the mode of irrigation, the *coom* source or the system of works from or by which the lands of the signers thereof, the lands embraced within the boundaries of said proposed district, or any portion thereof or any lands could be irrigated.

VI.

Said simulated and pretended petition purported to be signed by fifty or more freeholders owning lands susceptible of one mode of irrigation from a common source and by the same system of works, but that it does not appear therein or therefrom whether the lands so referred to were situated within the boundaries of the said proposed district or outside of the said boundaries, nor where the same nor any portion of them were situated, nor whether said pur-
95 ported signers were freeholders nor that they were, nor any of them was a freeholder owning lands within the boundaries of the said proposed district. Nor were said several matters nor any of them found or determined by said board of supervisors nor entered in the minutes of said board at any time. In truth and in fact, said simulated and pretended petition was not signed by fifty

or by a majority of the freeholders owning lands situate within the boundaries mentioned and described therein who desired to provide for the irrigation of their said lands.

VII.

Intervenors further alleg- that they have no information and believe and so state the fact to be, that no evidence was taken by or before said board of supervisors at any time during the proceedings herein alleged for the purpose of ascertaining, nor did said board ascertain at any time, how many of the persons whose names were signed to said pretended petition owned any real property within the proposed boundaries of said proposed district other than city or town lots, nor was said question considered by said board before taking final action upon said pretended petition.

VIII.

That at the time of the presentation of the petition, to wit, July 1st, 1889, the board of supervisors caused to be entered on the minutes of said board the following order:

"In the matter of the petition for the formation of the Tulare irrigation district.

"A petition praying for the formation of an irrigation district to be known as the Tulare irrigation district, having been this day filed and presented to this board and the necessary bond having been filed with said petition and it satisfactorily appearing to
96 this board that due notice of the presentation of said petition has been given as required by law and the following-named persons, to wit: Geo. D. Bliss, D. O. Harrelson and James Turner, appeared and asked to have their lands excluded from said district, whereupon witnesses were sworn and examined on behalf of said parties. Thereupon the board ordered that the hearing of said petition be set for Saturday, July 6th, 1889, at ten o'clock a. m."

That on Saturday, July 6th, 1889, said board met pursuant to adjournment and caused to be entered the following order on its minutes:

"In the matter of the formation of Tulare irrigation district.

"The board occupied the day in hearing testimony to have the lands excluded from said district."

On Tuesday, July 9th, 1889, the board caused the following order to be entered on its said minutes:

"In the matter of the petition for the formation of Tulare irrigation district.

"Application to have lands excluded from said district having been presented and filed, a motion was made by Supervisor Hender-

son that all the applicants who have a sufficient amount of water now, or who would not be benefitted by the proposed system of irrigation, be excluded from this district upon fixing the final boundaries by the board, which motion was carried by the following vote: Aye: Henderson, Newport, Borton. No: Woody."

That on Thursday, July 11th, 1889, the board caused the following order to be entered on its said minutes:

"In the matter of the petition of J. Goldman and others for the formation of an irrigation district.

"At a regular meeting of the board of supervisors of the county of Tulare, held at their usual place of meeting in the
97 court-house at Visalia, on Monday the 1st day of July, 1889, J. Goldman, J. C. Gist, William Bruce and more than fifty other persons duly presented to this board a petition in writing signed by them respectively, praying that the lands embraced in the proposed district, the boundaries of which were set forth and particularly described in said petition, be organized into an irrigation district under the provisions of an act of the legislature of the State of California, entitled, 'An act to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes, approved March 7th, 1887.' Said petition was accompanied with a good and sufficient bond on behalf of petitioners in double the amount of the probable costs of organizing said district, conditioned that the said bondsmen will pay all said costs in case said organization shall not be effected, which said bond was duly approved by said board of supervisors, and received with said petition and filed with the clerk of said board, and thereupon the further hearing and consideration of said petition and the matter of the organization of said therein-proposed district was by said board duly continued and set for hearing on the 6th day of July, 1889, at ten o'clock a. m. At which time the board duly convened and proceeded to the further hearing of the matter of said petition, and it appearing that several persons owning lands within the boundaries of said proposed district as set forth in said petition, were present before the board and had filed with the clerk of said board their several applications in writing asking that the lands severally owned by them be excluded from said irrigation district as finally fixed by said board upon the ground that such land will not be benefitted by irrigation by said system proposed in said petition, the board proceeded to hear the
98 testimony and proofs offered in evidence by and on behalf of said petitioners, and by and in behalf of said applicants to have their lands excluded from said district, and the board having adjourned said hearing from time to time, and said testimony and proofs having been fully received, and the matter of the formation of said proposed district, and the proper boundaries having been fully argued to said board by attorneys representing the different parties having an interest in

said matters, and the board having fully considered the testimony and proofs and arguments of said attorneys; now on this 11th day of July, 1889, finds the facts to be as follows, to wit:

"That said petition for the formation of said proposed irrigation district was duly signed by more than fifty freeholders owning lands susceptible of one mode of irrigation from a common source by the same system of works, which lands are embraced within the boundaries of said proposed district as hereinafter modified, fixed and established by said board, and that said petitioners desire to provide for the irrigation of said lands. That after said petition was signed by said petitioners and before the same was presented to this board as hereinafter stated, said petition together with a notice stating that said petition would be presented to this board on Monday, the 1st day of July, 1889, was duly published for three consecutive weeks next before said 1st day of July, 1889, in the 'Weekly Tulare Register' a weekly newspaper printed and published in said Tulare county, that on Monday, the 1st day of July, 1889, being the first day of the regular July meeting of this board, and this board being then convened in regular session, said petition was duly presented to this board and at the same time and accompanying said petition, said petitioners presented to this board a good and sufficient bond in double the amount of the probable costs of organizing said district, and conditioned that the bondsmen, the obligors in said bond named, will pay all costs in case said organization shall not be effected, which said bond was duly approved by this board, and filed with the clerk thereof.

99 "That in order to comply with the requirements of said act of the legislature hereinbefore cited, it is necessary to make changes in the boundaries of said district proposed by said petitioners and to exclude and except from the operation of said act of the legislature hereinbefore cited, and from said proposed district, certain lands within the exterior boundaries of said proposed district as the same are hereinafter and hereby established and defined for the reason that in the opinion of this board said lands so excluded are lands which will not be benefitted by irrigation by the same system of works applicable to the other lands in such proposed district, which lands so excepted are hereinafter specifically designated and described.

"That all the lands embraced within the boundaries of said proposed district as the same are hereinafter established and defined other than the lands excepted from the said*b* proposed district and hereinafter specifically designated are susceptible of one mode of irrigation from a common source and by the same system of works.

"Wherefore it is ordered and adjudged by said board of supervisors that vthe boundaries of said proposed irrigation district be and they are hereby established and defined as follows, to wit:

"Commencing at the quarter-section corner on the east side of section 20 in township 19 south of range 25 east, Mt. Diablo base and meridian; running thence west ½ mile, thence north ¼ mile, thence west ½ mile, thence north ¼ mile, thence west ½ mile,

thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west ½ mile, thence south ½ mile thence west, ½ mile, thence south ½ mile thence west ½ mile, thence south 1 mile, thence west about 250 rods more or less to the east side of the Southern Pacific Railway right of way, thence a little west of north on said railway line ½ mile more or less to the center section line running east and
100 west through section 27 in township 19 south, range 24 east, thence east ½ mile more or less, to quarter-section corner on the east side of said section 27, thence north ½ mile, thence west ½ mile, thence north 1 mile, thence west ½ mile, thence south ½ mile, thence west ½ mile, thence north ½ mile, more or less, to the east side of the Southern Pacific Railway right of way, thence northerly along the said east line of the said right of way 1 mile, more or less, to the north line of section 16, township 19, south, range 24 east, thence west 2½ miles, more or less, to the northwest corner of section 18, township 19, south, range 24 east, thence south ½ mile, more or less, to the northerly line of the United States survey of the swamp and overflowed land along the line of the Packwood creek, thence southwesterly following the meanders of said line of the swamp and overflowed land five miles more or less, to the township line between townships 19 and 20 south, at a point at or near the quarter-section corner on the south side of section 33, township 19, south, range 23, east, thence east on said township line ¾ miles more or less to the southwest corner of the southeast quarter of the southwest quarter of section 34, township 19 south, range 23 east, thence north ¼ mile, thence east ¼ —, thence north ¾ miles, thence east 1½ miles, thence north 1 mile, thence east ½ mile, thence south 1 mile, thence east 1½ miles, thence south 1 mile, thence west 1 mile, thence south 1 mile, thence west 2 miles, thence south 1½ miles, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ¾ miles, thence east ½ mile, thence south ¼ mile, thence east ½ mile, thence south ¼ mile, thence west ½ mile, thence south ¼ mile, thence east 1 mile to the quarter-section corner on the south side of section 4, township 20 south, range 24 east, thence south ½ mile, thence west ¼ mile, thence south ¼ mile, thence
101 west ¾ mile, thence south ¾ miles, thence west 1 mile, thence south ½ mile, thence west 2½ miles, thence south 2 miles, thence east 1 mile, thence north ½ mile, thence east 1 mile, thence south ½ mile, thence east ½ mile, thence north ½ mile, thence east ½ mile, thence south 1¼ miles, thence east ½ mile, thence south 2¼ miles, thence east 1 mile, more or less, to the channel of Elk bayou, thence following the meanderings of said Elk bayou in a northeasterly direction about 3 miles more or less to the ¼-section line running north and south through section 2, township 21 south, range 24 east, thence north on said ¼-section line ½ mile more or less, to the northwest corner of the south ½ of northeast ¼ of said section 2, thence east ¼ mile, thence north ¾ mile, thence west ¼ mile, thence north 1¼ miles, thence west ¼ mile, thence north about 60 rods to the line of the swamp and overflowed land

on the northeast ¼ of section 27, township 20 south, range 24 east, thence along the meanderings of said line of the swamp and overflowed land in a northeasterly direction about 80 rods, more or less to where said line crosses section line between sections 22 and 27 in township 20 south, range 24 east, thence east on said section line 10 rods more or less to the southeast corner of said section 22, thence north ¼ mile, thence east ½ mile, more or less to the Southern Pacific railway, thence northerly along said railway 20 rods more or less, to the north line of the swamp and overflowed land on section 23, township 20 south, range 24, east, thence northeasterly about 3 miles, more or less, following the meanderings of said northerly line of said swamp and overflowed land to the east line of section 18 at or near the ¼-section corner on the east side of said section 18, in township 20 south, range 25 east, thence north ½ mile, more or less, to the northeast corner of said section 18, thence west ½ mile, thence north ¾
102 miles, thence west ½ mile, thence north ¾ miles, thence east ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west 1 mile, thence south ½ mile, thence west ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, to the center of section 36, township 19 south, range 24 east, thence west ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence south ½ mile, thence east ½ mile, thence *thence* north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, more or less to the line of the swamp and overflowed land on the northeast ¼ of section 29, township 19 south, range 25 east, thence southwesterly following the meanderings of said line of said swamp and overflowed land about ⅗ths of one mile more or less to the east line of the west ½ of northwest ¼ of section 29 in township 19 south, range 25 east, thence south on said line 30 rods more or less to the southeast corner of said west ½ of the northwest ¼ of said section 29, thence west 30 rods more or less to the line of the swamp and overflowed land thence southwesterly following the meanderings of said line of swamp and overflowed land about 40 rods to west line of said section 29, thence south on said section line about 140 rods more or less to the southwest corner of said section 29, thence east one mile, thence north 120 rods, thence west 40 rods, thence north 40 rods, thence east 40 rods, thence north one mile to the place — beg-nning.

"That the following is a particular description of the lands situate within the exterior boundaries of said proposed district hereinbefore referred to which are excepted from the operation of said act of the legislature hereinbefore cited, and excepted and taken out of said proposed district, to wit:—

"S. E. ¼ of S. E. ¼ of sec. 24, N. ½ of N. ½ & S. E. ¼ of
103 N. W. ¼, sec. 25, T. 19 S. R. 25 E., S. 142 A. of S. W. ¼ of sec. 3, E. ½ & N. E. ¼ & N. ½ of S. E. ¼ of sec. 15, W. ½ of N. W. ¼ of sec. 23, N. E. ¼ of N. W. ¼ & N. ½ of N. E. ¼ & fr'l 44 A. of S. E. ¼ of sec. 28, T. 20 S., R. 24 E.

"And it is hereby ordered that the said proposed district be and the same is hereby divided into five divisions as nearly equal in

size as practicable, and numbered respectively first, second, third, fourth and fifth, as follows, to wit"

(Here follows description of the separate boundaries of each division of said district.)

"And it is further ordered that — an election held in said district at the various polling places hereinafter specified and ordered within the boundaries of said district between the hours specified by law on Saturday the 24th day of August, 1889, for the purpose of determining whether said proposed district shall be organized under the provisions of said act of the legislature of this State, hereinbefore cited, and referred to, said irrigation district shall be known and designated as the 'Tulare irrigation district.'

"And it is further ordered that notice of such election signed by the chairman and clerk of this board and attested by the official seal of this board, be given, which notice shall describe the boundaries of said proposed district established by this board, and shall designate the name of said proposed district, to wit, 'the Tulare irrigation district' and shall require the electors of said district to cast ballots which shall contain the words, 'Irrigation district—Yes' or 'Irrigation district—No.' or words equivalent thereto, and shall contain the names of persons to be voted for to fill the following offices of said proposed district, to wit: an assessor, a collector, a treasurer, and a board of five directors, one of said directors to be elected from each of said divisions of said proposed district
104 hereinbefore described and for the purpose of the election above provided for, election precincts are hereby ordered and established in said proposed district as follows, to wit:"

(Here follows a description of the five election precincts in said proposed district, and also includes the names of the polling places and the names of the persons who are to act as election officers.)

IX.

And thereafter, to wit, on the 2nd day of September, 1889, said board of supervisors made the following entry on their minutes, to wit:

"The board of supervisors of Tulare county, State of California, met as a board of canvassers on Monday, the second day of September, 1889, for the purpose of determining the result of the special election held in Tulare county, as follows: Held on the 24th day of August, 1889, to vote for and against the organization of the Tulare irrigation district and officers therefor.

"Present: D. V. Robinson, chairman. T. E. Henderson, James Barton, W. J. Newport, supervisors.

"Absent: Supervisor J. H. Woody.

"And the returns of said election being filed with the county clerk and *ex officio* clerk of said board, they were this day opened and canvassed by said board of supervisors, from which it appears that there were cast for 'Irrigation district—Yes' and for 'Irrigation district—No.' and for each of the persons hereinafter named

for the respective offices of such proposed irrigation district, the following votes, to wit:"

(Here follows a statement of the number of votes cast for and against the proposed district and the number of votes cast for
105 each candidate for each office in the proposed district and then proceeds as follows:)

"Now, therefore, we the board of supervisors of Tulare county, State of California, do hereby declare that at the special election held in said Tulare county on Saturday the 24th day of August, 1889, for the purpose of voting for and against the formation of a proposed irrigation district, to be known as the Tulare irrigation district, and for officers for such district, the number of votes are correct as set forth in the foregoing statement.

"That the several candidates for the respective offices named and 'Irrigation district—Yes' a-d 'Irrigation district No' received the whole number of votes set opposite their respective names and places in said statement.

"And further declare the territory embraced in the following-described limits, to wit:

"Commencing at the quarter-section corner on the east side of section 20 in township 19 south, range 25 east, Mt. Diablo base and meridian, running thence west ½ mile, thence north ¼ mile, thence west ½ mile, thence north ¼ mile, thence west ½ mile, thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west ½ mile, thence south ¼ mile, thence west ½ mile, thence south ¾ mile, thence west ½ mile, thence south 1 mile, thence west about 250 rods more or less to the east side of the Southern Pacific Railway right of way, thence a little west of north on said railway line ½ mile more or less to the center section line running east and west through section 27 in township 19 south, range 24 east, thence east ½ mile more or less, to quarter-section corner on the east side of said section 27, thence north ½ mile, thence west ¼ mile, thence north 1 mile, thence west ¼ mile, thence south ½ mile, thence west ½ mile, thence north ½ mile more or less to the east side of the Southern Pacific Railway right of way, thence northerly along the said east
106 line of the said right of way 1 mile, more or less, to the north line of section 16, township 19, south, range 24 east, thence west 2½ miles more or less, to the northwest corner of section 18, township 19 south, range 24 east, thence south ½ mile more or less to the northerly line of the United States survey of the swamp and overflowed land along the line of the Packwood creek, thence southwesterly following the meanders of said line of the swamp and overflowed land five miles more or less, to the township line between townships 19 and 20 south, at a point at or near the quarter-section corner on the south side of section 33, township 19, south, range 23 east, thence east on said township line ¾ miles more or less to the southwest corner of the southeast quarter of the southwest quarter of section 34, township 19 south, range 23 east, thence north ¼ mile, thence east ¼ mile, thence north ¾ miles, thence east 1½ miles, thence north 1 mile, thence east

¼ mile, thence south 1 mile, thence east 1½ miles, thence south 1 mile, thence west 1 mile, thence south 1 mile, thence west 2 miles, thence south 1½ miles, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ¾ miles, thence east ½ mile, thence south ½ mile, thence west ½ mile, thence south ½ mile, thence east 1 mile to the quarter-section corner on the south side of section 4, township 20 south, range 24 east, thence south ½ mile, thence west ½ mile, thence south ½ mile, thence west ¾ miles, thence south ¾ — thence west 1 mile, thence south ½ mile, thence west 2½ miles, thence south 2 miles, thence east 1 mile, thence north ½ mile, thence east 1 mile, thence south ½ mile, thence east ½ mile, thence north ½ mile, thence east ½ mile, thence south 1¼ miles, thence east ½ mile, thence south 2½ miles, thence east 1 mile more or less to the channel of Elk
107 bayou, thence following the meanderings of said Elk bayou in a northeasterly direction about 3 miles more or less to the ¼-section line running north and south through section 2, township 21, south, range 24 east, thence north on said ¼-section line ½ mile more or less to the northwest corner of the south ½ of northeast ¼ of said section 2, thence east ½ mile, thence north ¾ mile, thence west ½ mile, thence north 1¼ mile-, thence west ¼ mile, thence north about 60 rods to the line of the swamp and overflowed land on the northeast ¼ of section 27, township 20, south range 24 east, thence along the meanderings of said line of the swamp and overflowed land in a northeasterly direction about 80 rods more or less, to where said line crosses section line between sections 22 and 27 in township 20 south, range 24 east thence east on said section line 10 rods, more or less to the southeast corner of said section 22, thence north ¼ mile, thence east ½ mile, more or less to the Southern Pacific railway, thence northerly along said railway 20 rods more or less, to the north line of the swamp and overflowed land on section 23, township 20, south, range 24 east, thence northeasterly about 3 miles, more or less, following the meanderings of said northerly line of said swamp and overflowed land to the east line of section 18 at or near the ¼-section corner on the east side of said section 18 in township 20 south, range 25 east, thence north ½ mile, more or less, to the northeast corner of said section 18, thence west ¼ mile, thence north ¾ miles, thence west ½ mile, thence north ¾ miles, thence east ¼ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west 1 mile, thence south ½ mile, thence west ½ mile, thence south ½ mile, thence west ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile to the center of section 36, township 19 south, range 24 east, thence west ½ mile, thence north
108 ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence south ½ mile thence east ½ mile, thence *thence* north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile more or less, to the line of the swamp and overflowed land on the northeast ¼ of section 29, township 19 south, range 25 east, thence southwesterly following the meanderings of said line of said swamp

and overflowed land about ⅘ths of one mile, more or less, to the east line of the west ½ of northwest ¼ of section 29 in township 19 south, range 25 east, thence south on said line 30 rods more or less, to the southeast corner of said west ½ of the northwest ¼ of said section 29, thence west 30 rods, more or less to the line of the swamp and overflowed land, thence southwesterly following the meanderings of said line of swamp and overflowed land about 40 rods to west line of said section 29, thence south on said section line about 140 rods, more or less to the southwest corner of said section 29, thence east one mile, thence north 120 rods, thence west 40 rods, thence north 40 rods, thence east 40 rods, thence north one mile to the place — beginning. Excepting therefrom S. E. ¼ of S. E. ¼ of sec. 24, N. ½ of N. ½ & S. E. ¼ of N. W. ¼, sec. 25, T. 19 S. R. 25 E., S. 142 A. of S. W. ¼ of sec. 3, E. ½ & N. E. ¼ & N. ½ of S. E. ¼ of sec. 15, W. ½ of N. W. ¼ of sec. 23, N. E. ¼ of N. W. ¼ & N. ½ of N. E. ¼ & fr'l 44 A. of S. E. ¼ of sec. 28, T. 20, S., R. 24 *x* E. An irrigation district duly organized under the name and style of 'Tulare irrigation district' Being situate in the county of Tulare, State of California, and we further declare that,

"A. P. Merritt was duly elected director in division No. 1 of said district;
"W. B. Cartmill " " " " " " " 2 " "
"J. W. Mackie " " " " " " " 3 " "
"S. Richardson " " " " " " " 4 " "
"J. F. Gibson " " " " " " " 5 " "
"A. O. Erwin " " " assessor of said district.

109 "Alfred Fay was duly elected collector of said district.
"John A. Goble was duly elected treasurer of said district.
"D. V. ROBINSON, *Chairman.*

"Attest: JOHN G. KNOX, *Clerk,*
"By T. W. HOLDER,
"*Deputy Clerk.*"

X.

Intervenors further allege that neither said petition hereinbefore set out at length, the petition referred to in said order so entered in said minutes, nor any other petition or purported or pretended petition for the organization of, or pretended organization of said or any irrigation district to be designated and known as Tulare irrigation district, was or ever has been copied or set out at length in the minutes of said board of supervisors, or designated, described, referred to or identified in any other way than as appears in the order of said board aforesaid so entered in its minutes, and it cannot be nor could it at any time have been ascertained or determined from said order or the minutes of said board of supervisors what petition was mentioned or referred to in said minutes, or filed with said board nor what said petition contained or who were the signers or purported signers thereof, nor whether the same was a sufficient or legal petition, or whether the purported legal signers thereof nor whether the same was a sufficient or legal petition, or whether the purported signers of the same were

legal or qualified signers thereto, nor whether the real property situate within the boundaries of the proposed district mentioned therein (if any) were susceptible to one mode of irrrigation or of irrigation from a common source, or of irrigation by the same system of works, nor in nor by what name said proposed district was to be known or organized; nor what were the proposed boundaries thereof, nor what lands were included within said proposed boundaries or to be effected thereby, nor where the same were situated, nor whether any of the real property owned by any of the signers thereof was situated within the proposed boundaries thereof; nor whether the petition therein referred to was the same petition herein set out; nor any of said matters, nor any other matter required to be stated, was contained therein or known to said board or to any other persons interested therein except as hereinafter appears.

XI.

Intervenors allege that the order of said board of supervisors, hereinbefore set forth, attempting to establish the boundaries of said prpposed district, was illegal, invalid and unauthorized, for said board thereby attempted to make certain important and material changes in the boundaries of said proposed district as the same were described and defined in and by said pretended petition and that the boundaries so attempted to be defined and established by the said board by their said order, were different from the boundaries mentioned and described in said pretended petition, and certain large bodies of agricultural land, which were included within the boundaries proposed by the said pretended petition, were not included within the, but were excluded from the, boundaries defined by said order of said board of supervisors, without the consent of said petitioners and without any notice whatever to any of said petitioners or to any person or persons residing or owning real property within the boundaries defined in said pretended petition that said changes would be so made or that said proposed district, so attempted to be organized, would consist only of the real property included within the boundaries so established by said board of supervisors; and that said order in that particular and section 2 of said act, in so far as it provides for or permits said supervisors to make said changes in said boundaries on said final hearing, were and the same are in violation of section 1 of article III of the constitution of this State and of the constitutional provisions hereinbefore mentioned and referred to.

XII.

Intervenors further allege on their information and belief that no notice of said election was given by said board of supervisors or otherwise, and said pretended election, was for said reasons unauthorized and invalid, and in violation of the cons-tutional provisions hereinbefore mentioned and referred to, and was without jurisdiction or process of law, and void.

XIII.

Intervenors further alleg- that said board of supervisors did not cause a copy of said order declaring said district organized as an irrigation district duly certified or otherwise, to be immediately or at all filed for record in the office of the county recorder of said Tulare county, and no copy of said order has ever been recorded in the office of the county recorder of said Tulare county.

XIV.

Intervenors further alleg- that it does not appear from any of the proceedings had by said board of supervisors that any proof was made to said board of supervisors that the said organization election was held, nor was it ascertained or determined by said board that said election was in fact held, or that notice of said election was given by any one, either as required by law or at all, or, if said notice was given, by whom the same was given, nor whether said election, if held at all, was held or conducted in accordance with law and the order of said board.

XV.

Intervenors further alleg- that no other proceedings for the organization of said proposed district have ever been taken or had in any way, at any time, or at all.

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XVI.

Intervenors further allege that none of the aforesaid changes in the boundaries of said proposed district is or was noted or specified in any way upon the minutes or the records of said board of supervisors, nor could the same be ascertained therefrom in any other manner than as hereinbefore alleged, nor does it appear therein that any changes were so made, nor that changes so made were necessary or proper.

XVII.

Intervenors further alleg- that a large amount of agricultural land, to wit, about thirty thousand acres, which was embraced within the boundaries defined in and by said pretended petition, was excluded by said board of supervisors by said order of July 11th, 1889, from the boundaries so attempted to be established and defined by said board, and was thereby excepted from the operation of said act, but that it was not found nor determined by the said board that the land so excluded, nor any portion thereof, was not susceptible of irrigation by the same system of works applicable to the other lands of said proposed district, but that in truth and in fact, the same and the whole thereof was and is susceptible of irrigation by the same system of works applicable to the remaining lands of either said proposed district defined in said petition, or defined by said board of supervisors.

XVIII.

Intervenors further allege that for the aforesaid reasons and by reason of the facts, matters and things aforementioned, said simulated and pretended petition for the organization of said proposed irrigation district, said pretended and attempted notice of the hearing thereof, said attempted presentation thereof to said board of supervisors, said pretended bond of said petitioners, and all the proceedings of said board of supervisors aforesaid for the organization of said proposed district
113 were and are, and each and every of them is, unlawful unauthorized, null and void, and in violation of the provisions of said act aforesaid and in contravention of the aforementioned constitutional provisions, and said Tulare irrigation district is not, therefore, and never has been legally or at all organized, nor existing, as an irrigation district, nor entitled to exercise the functions or powers, privileges or authorities of an irrigation district.

XIX.

Intervenors further allege that said board of supervisors did not know that said petition, notice or bond was unlawful or unauthorized, or the proceedings aforesaid would have been taken or had by said board of supervisors for the organization of said district.

XX.

Intervenors further allege that, for the foregoing reasons and by reason of the foregoing facts, matters and things, said alleged and pretended irrigation district was not legally organized in accordance with the provisions of said act of March 7th, 1887, nor of any other act or law, nor at all, and was not during all or any of the time mentioned in said complaint and never has been and is not now an irrigation district.

And there never have been and there are not now any officers of said alleged or pretended irrigation district, and neither the several persons who are mentioned and referred to in said complaint nor any of them have, at the times mentioned therein, nor at any time, had any jurisdiction, power or authority of law whatever to issue said alleged bonds or coupons or any of them, or any bonds or coupons whatever, and the same are and each and every of them is, and at all time- has been void, and does not constitute a legal, binding or valid obligation of said alleged or pretended irrigation district or any irrigation district, and the same, so issued or pretended or attempted to be issued, as alleged
114 in said complaint, were and each and every of them was issued without due or any process of law and in violation of the provisions of said act, and of the provisions of section 13 of article I of the constitution of California, and of articles V and XIV of the amendments of the Constitution of the United States, that no person shall be deprived of property without due process of law and *contra bonas mores*.

And further answering said complaint, intervenors allege:

I.

That a pretended election for the alleged and pretended purpose of determining whether or not bonds of said alleged and pretended district, in the sum of five hundred thousand dollars should be issued, was pretended and attempted to be held in said pretended irrigation district by order of certain persons claiming and pretending to be and acting as directors of said district, on the 7th day of June, 1890. Said election was declared by an order of said pretended board of directors to have been carried in favor of the issuance of bonds of said district in said sum of five hundred thousand dollars.

Thereafter, to wit, on the — day of June, 1890, said board of directors ordered that the bonds of said pretended district, in the sum of five hundred thousand dollars be issued in the manner and form prescribed by law, which order was then and there entered upon the minutes of said board and thereupon became and ever since has remained part of the records of said alleged board.

II.

Intervenors further allege on their information and belief, that at no time since the pretended organization of said alleged and pretended district, was a system of works or one mode of irrigation from a common source of supply ever established or located, nor was any common source of supply located or established for any irrigation system or system of irrigation works, by said pretended and alleged board of directors of said district, nor was any
115 system of irrigation ever established for or by said alleged and pretended district and no line of canals with the necessary branches therefor to irrigate the lands embraced within the said alleged and pretended district was ever fixed or determined upon by said pretended board or by any other person.

III.

Intervenors further allege on their information and belief that none of said five hundred thousand dollars of alleged bonds of said alleged district have been used in the purchase at the par value thereof of any lands, water rights or other property necessary for the construction, use, supply, maintenance, repair, improvement or betterment of canals or works or of lands for reservoirs for the storage of needful waters, nor have any of said alleged bonds been sold for ninety per cent. of the face value thereof, but said alleged and pretended board of directors of said alleged district have exchanged and disposed of said five hundred thousand dollars of said alleged bonds in the manner following, to wit:—

(a.) Said board of directors on or about the 1st day of January, 1891, exchanged $150,000 of the bonds of said alleged district, being 300 bonds of the denomination of five hundred dollars each, and number 1 to 300 inclusive, with the firm of J. Goldman & Co. for

forty-five thousand dollars in cash and a worthless water right on the St. John's river known as the Settler's ditch, and which water right from its location was wholly unavailable to irrigate any of the lands of said alleged district, and as part of the proceedings and for the purpose of making said exchange said board went through the form of advertising for bids for the bonds of said alleged district in the amount of fifty thousand dollars, for which bonds the said firm of J. Goldman & Co. bid ninety per cent. of the face or par value thereof, but said bid was made by said firm and accepted by said board with the understanding and agreement between said firm of J. Goldman & Co. and said board and as
116 part of the consideration for said bid, that said board of directors should purchase from said firm of J. Goldman & Co. the said water right known as Settler's ditch for the sum of one hundred thousand dollars, of the bonds of said alleged district:

(*b.*) That on or about the 15th day of April, 1892, the said board of directors exchanged one hundred and fifty thousand dollars of the bonds of said alleged district, being bonds numbered 419 to 719 inclusive, of the denomination of five hundred dollars each, for the canals, ditches and water rights claimed by the Kaweah Canal & Irrigation Company; that said board exchanged twenty thousand dollars of the bonds of said alleged district, being bonds numbered 719 to 758 inclusive, of the denomination of five hundred dollars each, for the ditches and canals claimed by the Rocky Ford Canal and Irrigation Company, which exchange was made at the same time said exchange was made for said Kaweah Canal & Irrigation Company.

That neither of said companies owned or possessed any water rights whatever at the time of said exchange, nor rights of way over the lands covered by any of the said canals or ditches; that said canals and ditches so purchased from the Kaweah Canal & Irrigation Company were not worth more than the sum of twenty thousand dollars, and the canals and ditches of said Rocky Ford Canal & Irrigation Company were not worth more than the sum of one thousand dollars, all of which was well known by the board of directors of said alleged district at the time of said exchanges.

(*c.*) That bonds numbered 387 to 397 inclusive, of the denomination of five hundred dollars each, were delivered to J. H. Woody and T. W. Maples on the 15th day of June, 1891, by said board of directors for labor on canals in said alleged district; that the debt for which the same was given in satisfaction was contracted for by said board of directors and said work was performed at a time
117 when there was no money in the treasury of said alleged district applicable to the payment therefor.

(*d.*) That bonds of said alleged district numbered 341 to 386 inclusive, of the denomination of five hundred dollars each were, on the 3rd day of June, 1891, hypothe*t*icated by the board of directors of said alleged district, to the Bank of Tulare*n* of the city of Tulare, in this county and State, to secure the payment of a note in the principal sum of $20,250 executed by the members of said

board of directors and divers other persons, which said note has been paid in full, and which bonds have not been returned to said district by said bank, nor have said bonds nor any portion thereof ever been sold by said alleged district.

(e.) That bonds numbered 301 to 340 inclusive, 397 to 418 inclusive and 759 to 1,000 inclusive, each of the denomination of five hundred dollars, were between the 4th day of June, 1891, and the 13th day of January, 1893, delivered to one R. Linder by said board of directors at the rate of ninety per cent of the face value of said bonds, in payment for labor on said canals and ditches.

IV.

Intervenors further allege that neither said Settler's ditch on said St. John's river nor the ditches nor canals of said Kaweah Canal & Irrigation Company, nor the ditches nor canals of said Rocky Ford Canal & Irrigation Company, nor any water thereof or flowing therein, or in any of said ditches or canals or any part or parcel of them was in anywise connected with any system of irrigation that has ever been devised or adopted for said pretended district by the alleged board of directors thereof; that no notice of intention to exchange any of said bonds so exchanged for ditches or water rights or rights of way was ever given or published by said alleged board of directors or any one else; and the said exchanges of said alleged bonds so made were illegal and void and without authority of law, and in violation of the provisions of said act of the legislature, approved March 7th, 1887.

V.

118 Intervenors further allege that no notice of intention to exchange any of said pretended bonds for work or labor done or to be done on said alleged canals or ditches, was ever given or published by said board of directors of said alleged district, or any one else, and said exchanges were each of them illegal and void and without authority of law and in violation of the express provisions of the aforesaid act of the legislature of the State of California.

VI.

Intervenors further allege that all the bonds so given or delivered or exchanged for — done for said district or for said canals, ditches and pretended water rights as hereinbefore alleged, were so taken and received at prices much less than the par value thereof; that the bonds so exchanged for labor were paid out and exchanged as aforesaid at the minimum price allowed by law for the sale thereof; that said bonds to the entire amount of five hundred thousand dollars of the par value thereof, as nearly as intervenors can ascertain the same, were so illegally exchanged and disposed of by said board as hereinbefore alleged; that all the work so done and performed upon the canals and works of said alleged district in exchange for said bonds was contracted for and so done and performed at a price therefor greatly in excess of the amount — would have been charged or received or paid therefor in cash,

and for which said work could have been procured to have been done for cash, and said board of directors well knew said facts at the time of making said contracts for work and said exchanges, and that said excessive prices so paid *was* agreed upon and adopted by said board of directors and the parties to whom said bonds were delivered for the purpose and with the intention of enabling said board so to exchange said bonds for said work and for said canals and ditches, and that said persons receiving said bonds would not have entered into any agreement with said district so made by them or any of them for performing said work in
119 exchange for bonds or in exchanging said canals or ditches or pretended water rights for said bonds, and would not have taken said bonds in payment or exchange for said work or ditches or pretended water rights except at a price much in excess of the reasonable price or value of said works and the cost for which said work could have been procured for cash, and in excess of a reasonable price or value for said canals, ditches and pretended water rights, and with a large discount from the par value of said bonds, and that said board of directors well knew said facts at the time of making said exchanges and each of them therefor; that for said reasons said alleged district and the owners of real property therein have been and are greatly damaged and injured thereby, and said exchanges of bonds as hereinbefore alleged were and the same are for said reasons, unlawful, unjust, oppressive and fraudulent, and against public policy and contrary to good morals, and in violation and in excess of the provisions of said act, and of the constitutional provisions hereinbefore referred to, and said board had no power, jurisdiction or authority to so dispose of said bonds or any of them.

VII.

Intervenors further allege that all the alleged bonds of said alleged district express upon their face that they were issued by authority of said act of March 7th, 1887, stating its title and deed of approval thereof, and in the sale, exchange or disposal of said bonds by said alleged district or board there was no warranty whatever of the validity thereof.

VIII.

Intervenors further allege that none of the lands in said alleged district as the same was organized is or ever has been arid or desert or of such character that it would not produce usual and ordinary crops of ordinary vegetables, grains, cereals, melons and other vegetables and fruits common to the climate thereof, or of other portions of the interior of said State or to agricultural lands elsewhere, without artificial irrigation, but that on the contrary said lands for
120 many years prior to the organization of said alleged district had been regularly cultivated and sown and planted with wheat, barley, alfalfa, orchards, vineyards, vegetables and other farm products and had heretofore produced, and ever since has produced, the usual fair and ordinary crops which should be produced upon the farm and agricultural lands; that said lands did not, nor

do the same now require artificial irrigation to make the same productive and profitable, and that for said reasons, there was not at the time of the organization of said alleged district any legal or other reason or necessity for the organization of said alleged district for the purpose of artificially irrigating the lands thereof, or of any of said lands or for the sale of the alleged bonds thereof.

IX.

For said reasons, and other reasons herein alleged, the organization of said alleged district, the pretended and attempted sale and exchange of the alleged bonds thereof, the levy and collection of assessments upon and against the lands of said district, and of the provisions of said act of the legislature of March 7th, 1887, so far as the same relate to said district, are and each of them is unconstitutional and void, and in violation of the provisions of articles V and XIV of the amendments to the Constitution of the United States, and of the provisions of section 13 of article I of the constitution of California, which provide that no person shall be deprived of property without due process of law, and in violation of the provisions of section 1 of article I of the constitution of California, that all men have certain inalienable rights, among which are those of acquiring, possessing and protecting property, and also in violation of article XIV of the amendments to the Constitution of the United States, that no State shall deny to any person within its jurisdiction the equal protection of the laws, and also in violation of the pro-
121 vision of the constitution aforesaid, that no private property shall be taken or damaged for public use without just compensation therefor.

X.

Intervenors further allege that a large portion of the land in said alleged district is not susceptible of irrigation and would not be benefitted but would be injured thereby, and the expense of preparing for irrigation such portions of said land as could be irrigated or benefitted by irrigation will be very large and dis-portionate to any benefit which could be received therefrom by the owners thereof.

XI.

For the foregoing reasons, the alleged system of irrigation provided for by said act and the board of directors of said district has been and is and will continue to be very unprofitable, burdensome and oppressive and the expense thereof wholly dis-portionate to the benefits which have been or ever will be received by owners of real property in said district and impracticable and destructive to the interests and welfare of said people.

XII.

Intervenors further allege that all the bonds of said district have been sold, exchanged and disposed of as hereinbefore alleged but no sufficient water supply or water rights have been obtained or

acquired by said district to irrigate more than one-fifth of the lands in said district in any one year, nor is there any available source of supply from which more water can be obtained; that the bonded indebtedness of said district, including the interest to grow due thereon if said bonds are valid, is nearly equal to the value of all the real property situate in said district.

XIII.

Intervenors further allege that upon the hearing of the petition for the organization of said Tulare irrigation district
122 before the board of supervisors of Tulare county, as hereinbefore set forth, said board of supervisors attempted to and did establish and define the boundaries of said proposed Tulare irrigation district, but that the boundaries so established and defined by said board of supervisors and as set forth in said order so establishing the same, comprised and embraced four separate and distinct bodies of land, not contiguous to each other, and which taken together did not and do not form one tract of land, and is not such a body of land as is contemplated or intended by said act of the legislature to be formed into or for an irrigation district, nor such a body of land as was petitioned to be organized into an irrigation district.

And said order of said board was spread upon the minutes of said board and thereby became and ever since has continued to be a public record of said board and said county of Tulare, and all persons were notified thereby of the proposed boundaries of said district.

And intervenors allege that by reason thereof, it never had and has not now any existence in fact as an irrigation district, and has never had and has not now any authority to create any indebtedness or to issue any evidences of indebtedness and never had any authority to issue any of the bonds or coupons mentioned in plaintiff's complaint, or to perform any of the functions of a duly organized irrigation district.

And that the act of said board of supervisors in so establishing the boundaries of said district so that it comprised four separate and distinct bodies of land not contiguous to each other, was without jurisdiction and is null and void; and the acts of the board of directors of said pretended Tulare irrigation district, in the issuance of the bonds hereinbeforev mentioned and in plaintiff's complaint set forth, was without authority or power so to do, and the same are null and void.

XIV.

123 Intervenors further allege that the provisions of said act of March 7th, 1887, in so far as the same conferred or attempted to confer upon boards of supervisors of counties in which a proposed district is situated, and especially the board of supervisors of the county of Tulare, State of California, power, jurisdiction or authority to hear the petition for the organization of the

proposed irrigation district, to establish and define such boundaries as so changed to include four separate and distinct bodies of land or otherwise, or to make an order dividing the proposed district into divisions, or to give notice of an election for the organization of such proposed district to be held therein, to hold or conduct such election*m* or to case the vote thereat, to declare certain persons elected to offices in such district, to cause a certified copy of any such orders to be recorded in the office of the county recorder in each county in which any portion of the lands of such district is situated, or authorizing or permitting such board or boards of supervisors to take said or any other proceedings for the organization of an irrigation district, under the provisions of said act, are and each of them is unconstitutional, and void, and in conflict with the provisions of section 1 of article III and section 1 of article IV of the constitution of California for the reason that said act and said provisions thereof confer or attempt to confer upon said boards of supervisors certain powers therein specified which can be legally exercised only by the legislature of the State, and in violation of the provisions of section 1 of article III of the constitution of California; and for the foregoing reasons, said alleged district has not and never has had any legal, valid or constitutional existance.

XV.

It is not intended by reason of any allegation or denial herein to concede or admit the legality of the organization of said alleged Tulare irrigation district, or the *de jure* or *de facto* existance
124 of any board of directors or any officers thereof, or of any bond thereof, or coupon attached thereto, at any time, or the validity of any act, bond or coupon mentioned herein or in plaintiff's complaint; but, on the contrary, expressly asserts and alleges that all and every thereof are and at all times have been wholly invalid, null and void, and imposed no obligations or liability upon the real property of said alleged district nor any of it, nor upon owners of property therein, or any of them.

And for a further and separate defense to plaintiff's complaint, intervenors allege that heretofore, to wit, on the 11th day of August, 1890, the persons pretending to be the board of directors of said pretended Tulare irrigation district, pursuant to the provisions of an act of the legislature of the State of California, approved March 16th, 1889, known as the confirmation act, filed in the superior court of the county of Tulare, State of California, a petition whereby said petitioners represented that said Tulare irrigation district was on or about the second day of September, 1889, duly organized as an irrigation district by the board of supervisors of said Tulare county under a*m* act of the legislature of the State of California, approved March 7th, 1887, and that ever since such organization it had claimed in good faith to be and had existed as an irrigation district.

That the first board of directors of said district was duly elected under the provisions of said act; that — an election held on the 2nd day of April, 1890, J. W. Mackie, A. P. Merritt, W. B. Cartmill, E.

De Witt, and J. F. Gibson were elected members of the board of directors of said district, and at such time constituted such board of directors; that all the lands of said district were situated within Tulare county.

That the board of directors on or about the 12th day of May, 1890, estimated and determined the amount of money necessary to be raised by said district for the purpose of constructing the
125 canals and works necessary for the irrigation of the land of said district, and for water and water rights; and that said board estimated the sum of five hundred thousand dollars was necessary to be raised for said purposes, and determined that it was necessary that bonds of said district in the amount of said five hundred thousand dollars be issued and the same be sold in order to raise the money necessary for said purposes, provided the qualified electors should vote in favor of the issue of said bonds.

That said board called a special election at which should be submitted the question whether or not such bonds of said district should be issued in the amount so determined by said board; and that said election be held on the 7th day of June, 1890, and ordered that notices thereof be given by posting the same in each election precinct in each district, and also by publication in the "Weekly Tulare Register," that notices of said election were posted and published as ordered by said board; that such election was in fact held in said district and conducted in conformity with the provisions of said act and the returns from such election were filed in the office of said board of directors; and that on the 9th day of June, 1890, said boarde of directors canvassed such returns and ascertained therefrom and found and declared as the result of such election that 398 votes were cast at said election, and that 348 thereof were in favor of said issue of said bonds, and that 50 votes were cast against such issue of said bonds.

That said board caused the result of such election to be entered upon its minutes, and on the 1st day of July, 1890, ordered that the bonds of said district in said sum of five hundred thousand dollars be issued in the manner and form prescribed by law; that each of said bonds should be of the denomination of five hundred dollars, and should have attached thereto coupons for the instalments of the principal and for the semi-annual payment of the interest; that said bonds should be dated the same day and
126 should state the date of its maturity, and stating therein the form of said bonds and coupons for instalments of principal and coupon for interest, and that one thousand thereof be prepared, executed and issued in such manner and form; and that thereafter on the 6th day of August, 1890, said board of directors by its order declar*ing* its intention to sell said bonds in the amount of two hundred thousand dollars on the 17th day of November, 1890; that none of the said bonds had been sold, but that all of the same remained unsold and praying that the proceedings for the issue and sale of said bonds be judicially examined, approved and confirmed by said court; and which proceedings, was entitled "In the matter of Tulare irrigation district."

And thereafter, to wit on the — day of May, 1898, B. W. Jauchius, J. L. Gould, George C. Kelly, and Ralph Jones, by leave of court had, filed their answer to said petition, denying that said irrigation district was duly organized as an irrigation district by said board of supervisors, and denying that it had claimed in good faith or otherwise to be an irrigation district; and alleging that the petition presented to the board of supervisors of said Tulare county, for the formation of said district was not signed by fifty nor by a majority of the freeholders owning land in said pretended district.

That no notice of the time of the meeting at which said petition would be presented to said board of supervisors was ever given; that said board of supervisors, in violation of the express provisions of said act authorizing the formation of said district, changed the proposed boundaries so as to exclude fully thirty thousand acres of land susceptible of irrigation from the same system of works applicable to the other lands in said proposed district;

That upon the hearing of said petition, said board of supervisors defined the boundaries of such proposed district so that the same comprised and embraced four separate and distinct bodies of
127 land not contiguous to each other, and which was not such a body of land *b* as is contemplated or intended to be organized as an irrigation district; that said board of supervisors did not cause a copy of its order declaring the territory petitioned for organized as an irrigation district, to be filed for record in the office of the county recorder of Tulare county.

And denying that the board of directors of said district at any time, estimated or determined the amount of money necessary to be raised by said district for the purpose of constructing canals and works necessary for the irrigation of the lands of said district, or for acquiring water or water rights therefor.

And denying that said board at any time estimated that the sum of five hundred thousand dollars was necessary to be raised for such purpose; and alleging that at no time had the board of directors of said district estimated or determined the amount of money necessary to be raised by said district for the purposes of constructing canals and works necessary for the irrigation of the lands of said district, and for acquiring water and water rights therefor.

And alleging that at no time had its board of directors ever established or located or adopted any system of works for a mode of irrigation for the lands of said district from a common source of supply; and alleging that no plans or specifications for any system of irrigation or irrigation works were ever made whereby an estimate could be made by said board.

And alleging that said board of directors did not estimate that the sum of five hundred thousand dollars, or any other sum would be necessary to be raised for the purpose mentioned in said petition; and denying that said board of directors ever determined that it was necessary or proper that bonds of said district, to the amount of five hundred thousand dollars should be issued by said district or sold, in order to raise the amount of money necessary for said purposes.

128 And alleging that said board of directors did not at any time determine that it was necessary or proper that the bonds of said district in the sum of five hundred thousand dollars be issued or sold to raise the money necessary for the purpose of constructing canals and ditches.

And alleging that said *b* B. W. Jauchius, J. L. Gould, George C. Kelly, and Ralph Jones had been ever since the organization of said district, and were at the time of the filing of their answer therein, owners of real property within the boundaries of said district; and praying that the approval and confirmation of the proceedings had by said board of directors as aforesaid, and as alleged in said petition, be denied and that a decree be had adjudging said district illegally organized and void.

And thereafter such proceedings were had in said matter of Tulare Irrigation District, that on the 23rd day of November, 1898, there was entered therein the following order, to wit:

"In the Superior Court of the State of California in and for the County of Tulare.

"In the Matter of Tulare Irrigation District.

"This cause came on regularly for hearing by stipulation of the parties hereto and the order of the court before said court on the 17th day of June, 1898, said board of directors petitioners herein appearing by E. W. Holland, as its attorney, and the defendants, B. W. Jauchius, J. L. Gould, George C. Kelly and Ralph Jones, appearing herein by their attorneys C. L. Russell and G. W. Zartman; and the cause having been tried on said 17th day of June, 1898, by the court without a jury, and the testimony both oral and documentary, having been heard and the case having been submitted to the court for decision, and the court having made and filed its findings of fact and conclusions of law, and its order for judgment, entered in accordance therewith in favor of said defendant.

129 "Wherefore by reason of the law and the findings and order aforesaid it is ordered, adjudged and decreed:

"That the said Tulare irrigation district never was and is not now duly or legally organized by the directors of the board of supervisors of Tulare county on or about the second day of September, 1889, nor at any other time, and the same is not now a duly or legally organized irrigation district;

"That the first board of directors of said irrigation district were not duly or legally organized;

"That all the proceedings of said board of supervisors under and by virtue of which said irrigation district was organized and first board of directors of said district was elected are null and void, and approval of the same is hereby denied.

"And it is further ordered, adjudged and decreed:

"That all the proceedings had by or under the authority and direction of the board of directors of said Tulare irrigation district for the purpose of the issuance and sale of the bonds of said district

to the amount of $500,000.00 are null and void, and approval of the same is hereby denied.

"And it is further ordered, adjudged and decreed that the said Tulare irrigation district ever since its attempted organization on or about the second day of September, 1889, as aforesaid, has never been and is not now a legally organized irrigation district; that it has never possessed and does not now possess any power or authority to issue or sell bonds of said district, create indebtedness, or perform any of the functions, franchises, or other acts of an irrigation district.

"And it is further ordered that petitioners pay the costs herein.

"WHEATON A. GRAY,
"*Judge of the Superior Court.*

"Dated this November 23rd, 1898."

130 And for a further and separate defense to plaintiff's complaint, intervenors allege:—

I.

That at a regular meeting of the board of supervisors of the county of Tulare, on July 1st, 1889, a petition for the organization of said district was presented to said board of supervisors, praying that the said proposed Tulare irrigation district be organized under the provisions of the aforesaid act of March 7th, 1887, and acts amendatory thereof and supplemental thereto; that after hearing said petition, said board, on July 11th, 1889, made an order establishing and defining the boundaries of said proposed district and ordered an election to be held for the purpose of determining whether or not the same should be organized under the provisions of said act; which election was thereafter held on August 24th, 1889, and on September 2nd, 1889, said board declared said district duly organized within other boundaries than the boundaries established and defined by the aforesaid ordern of June 11th, 1889.

II.

That thereafter the board of directors of said district employed one P. J. Flinn and one John S. Urton, civil engineers to make surveys and estimates on the cost of constructing a system of irrigation for said district from the Kaweah river in said Tulare county; which surveys were thereafter made and the estimates of said engineers as made to said board of directors are contained in the reports of said engineers made to said board by said John S. Urton on October 29th, 1889, and by said P. J. Flinn, on May 6th, 1890, at which time it was ordered by said board of directors that two thousand copies of said reports and other information be published. That at a meeting of said board of directors of said district, held on the 8th day of May, 1890, it was ordered that it was the sense of said board that five hundred thousand dollars of the bonds of said district be issued;

131 that on the 12th day of May, 1890, the report of the special committee appointed to write up proceedings of the board

with reference to securing water was read and ordered adopted, and it was further ordered that the report of the commi-tee adopted and signed by the board this day be made part of and publis-ed with pamphlet containing Engineer Flinn's report, which report is contained in the printed pamphlet hereunto annexed and marked Exhibit "A" and expressly referred to and made a part hereof and which pamphlet also contains the report of said engineer Urton, and the report of said special committee; no part of which report is or ever have been on file with, or ever made part of the records of said district.

That no estimate of the amount of money necessary to be raised for the purpose of constructing any proposed system of irrigation for said district was ever made except as set forth in the report of said board contained in said Exhibit "A." That the action of said board of directors in determining that five hundred thousand dollars of bonds should be issued was not based upon any data, specifications, or estimates of any character whatever but said amount was a mere guess and was based exclusively upon the opinion of the members of said board of directors that said district would not at *at* that time vote in favor of the issuance of a greater amount of bonds and it never was the intention of said board of directors to construct a system of works on the lines proposed in said reports contained in said Exhibit "A," nor on any of said lines, nor has any system of works of said district ever been constructed on any of the lines proposed in said Exhibit "A."

III.

That on said 12th day of May, 1890, said board of directors ordered that an election be held to determine whether bonds in the amount of five hundred thousand dollars should be issued for the purpose of constructing the system of works designated in
132 said Engineer Flinn's report as Middle Level canal No. one, and from said 12th day of May, 1890, to the date of said election there *was* circulated by said board of directors among the voters of said district numerous copies of said report for the purpose of giving information to said voters of the plans to be pursued by said board in procuring an irrigation system for said district.

That said election was held on the 7th day of June, 1890, and a majority of the votes cast thereat were in favor of the issuance of said bonds, and said officers of said district have since gone through the form of issuing and delivering to pretended purchasers thereof, and exchanging for uncertain water rights the bonds of said district amounting to the total sum of five hundred thousand dollars which bonds are claimed to be outstanding bonds of said district.

And for a further and separate defense, intervenors allege that the said bonds and every part thereof, and the other coupons therein sued upon, are and each and every of them is barred by the provisions of subdivision 1 of section 338 of the Code of Civil Procedure; and that said bonds and every part thereof, and the other coupons

therein sued upon are and each and every of them is barred by the provisions of section 337 of the Code of Civil Procedure.

Wherefore, intervenors pray:

1. That they may be permitted to intervene herein and join in the defense of said action.

2. That plaintiff take nothing by this action.

3. That plaintiff be required by the judgment herein to deliver to the court all and singular the bonds mentioned in his complaint, and all coupons and instalments of principal attached thereto, and all other coupons mentioned in his complaint for cancellation, and that it be adjudged and decreed that the same are, and each and every of them is, illegal, unlawful, null and void, and that
133–202 the *said* be cancelled and destroyed and plaintiff be perpetually enjoined and restrained from transferring or circulating the same or asserting the same or any of them against said alleged district.

4. For their costs of suit herein.

5. For such other and further relief as may be meet in the premises.

C. L. RUSSELL,
G. W. ZARTMAN,
Attorneys for Intervenors.
JOHN GARBER,
GEORGE H. MAXWELL,
Of Counsel.

STATE OF CALIFORNIA } ss:
County of Tulare, }

B. W. Jauchius, being duly sworn, deposes and says: That he is one of the intervenors in the foregoing action; that he has heard read the foregoing complaint in intervention, and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

B. W. JAUCHIUS.

Subscribed and sworn to before me, this 28th day of September, 1899.

C. L. RUSSELL,
Notary Public in and for the County of Tulare, State of California.

[SEAL.]

(Ten-cent revenue stamp cancelled.)

203 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
v.
TULARE IRRIGATION DISTRICT, Defendant; GEORGE G. Kelly and B. W. Jauchius, Intervenors. } No. 859.

It is hereby stipulated and agreed that a jury in this action is waived, and that the issues of fact herein may be tried and determined by the court without the intervention of a jury.
Dated Oct. 17th, 1899.

S. F. LEIB,
Attorney for Plaintiff.
C. L. RUSSELL AND
G. W. ZARTMAN,
Attorneys for Defendant.
C. L. RUSSELL AND
G. W. ZARTMAN,
Attorneys for Intervenors.

GEO. H. MAXWELL,
JOHN GARBER,
Of Counsel for Defendants and Intervenors.

(Endorsed:) No. 859. U. S. circuit court ninth circuit, southern district of California. Alfred Shepard, plaintiff *v.* Tulare Irrigation District, defendant. George *C.* Kelly, *et al.*, intervenors. Stipulation waiving jury trial. Filed Oct. 17 1899, Wm. M. Van Dyke, clerk

204 (Endorsed:) No. 859. In the U. S. circuit court, southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, defendant. Complaint in intervention of B. W. Jauchius and Geo. G. Kelly. Filed Oct. 9 1899 Wm. M. Van Dyke, clerk G. W. Zartman, Calvin L. Russell Tulare, Cal. attorneys for intervenors. Geo. H. Maxwell, John Garber of counsel.

205 In the Circuit Court of the United States, in the Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, a Corporation, Defendant. } No. 859.

This cause came on regularly for trial before the court, sitting without a jury, upon the issues joined herein, the plaintiff and intervenors herein having, by stipulation in writing signed by them and filed herein, stipulated that the allegations of the complaint in intervention herein should be deemed to be denied, and a jury having been expressly waived by stipulation in writing filed herein before the trial of this action, signed by the plaintiff and the defendant and the intervenors herein, the said cause was tried by the court upon the issues joined herein, and argued and submitted to

the court for decision. And the court being fully advised finds for the plaintiff on all the issues joined herein, and assesses the damages of plaintiff at the sum of thirteen thousand one hundred and eighty-five dollars, and finds that he is entitled to judgment against the Tulare Irrigation District for the said sum, and hereby orders that judgment be entered herein that plaintiff have and recover of and from said Tulare Irrigation District the said sum of thirteen thousand one hundred and eighty-five dollars.

Dated: March 30th, A. D. 1901.

OLIN WELLBORN,
United States District Judge.

206 (Endorsed:) No. 859. U. S. circuit court ninth circuit, southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, a corporation, defendant. Findings. Filed Mar. 30, 1901 Wm. M. Van Dyke, clerk.

207 In the Circuit Court of the United States, in the Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, a Corporation, Defendant. } No. 859.

This cause coming on regularly for trial before the court sitting without a jury, upon the issues joined herein, the plaintiff and intervenors herein having by stipulation in writing signed by them and filed herein, stipulated that the allegations of the complaint in intervention herein should be deemed to be denied, and a jury having been expressly waived by a stipulation in writing filed herein before the trial of this action, signed by the plaintiff and the defendant and the intervenors herein, and the court having thereupon tried said action upon the issues joined herein, and the cause having been thereupon submitted to the court for decision, and the court having thereupon made its general findings in favor of the plaintiff and assessing his damages at the sum of thirteen thousand one hundred and eighty-five dollars, and ordered that judgment be entered herein that he have and recover of and from the said defendant Tulare Irrigation District the sum of thirteen thousand one hundred and eighty-five dollars,

Now, therefore, by reason of the finding and the order aforesaid, and of the law and the premises, it is hereby adjudged that plaintiff, Alfred Shepard do have and recover of and from the defendant Tulare Irrigation District, the sum of thirteen thousand one hundred and eighty-five dollars.

Judgment entered March 30th, 1901.

WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States, Ninth Circuit, Southern District of California.

208 I, Wm. M. Van Dyke, clerk of the circuit court of the United States, for the southern district of California, do hereby certify the foregoing to be a full, true and correct copy of an original judgment made and entered by said court March 30th, 1901, in the cause entitled Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, a corporation, defendant, No. 859, and now remaining of record therein.

Attest my hand and the seal of said circuit court, this 30th day of March, A. D. 1901.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 859. United States circuit court ninth circuit, southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, defendant. Certified copy of judgment. Filed Mar. 30, 1901 Wm. M. Van Dyke, clerk.

209 In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant. } No. 859.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States, for the ninth judicial circuit, southern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled action.

Attest my hand and the seal of said circuit court, this 30th day of March, A. D. 1901.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 859. In the circuit court of the United States, ninth judicial circuit, for the southern district of California. Alfred Shepard, *vs.* Tulare Irrigation District. Judgment-roll. Filed Mar. 30th, 1901. Wm. M. Van Dyke, clerk. Recorded Judgment Register Book No. 1, page 425.

210 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

ALFRED SHEPARD, Plaintiff,
v.
TULARE IRRIGATION DISTRICT (a Corporation), Defendant. } No. 859.

Opinion of the Court on Demurrer to Complaint.

Plaintiff, who is a citizen and resident of the State of Michigan, sues to recover upon interest coupons issued by the defendant, an irrigation district created under a statute of the State of California, known as the Wright irrigation act.

The plaintiff alleges the due organization of said district, the issuance of the bonds, to which said coupons were attached, and, that the plaintiff is a *bona fide* holder thereof.

Defendant has interposed a demurrer to the complaint, on the various grounds hereinafter noticed, and the present hearing is on said demurrer.

Said act, Statutes California, 1887, page 29 *et seq.*, contains, among others, the following provisions relating to bonds;

"SEC. 15. For the purpose of constructing necessary irrigating canals and works, and acquiring the necessary property and rights therefor, and otherwise carrying out the provisions of this act, the board of directors of any such district must, as soon after such district has been organized as may be practicable, and whenever thereafter the construction fund has been exhausted by expenditures herein authorized therefrom, and the board deem it necessary or expedient to raise additional money for said purposes, estimate and determine the amount of money necessary to be raised,
211 and shall immediately thereafter call a special election, at which shall be submitted to the electors of such district possessing the qualifications prescribed by this act, the question whether or not the bonds of said district in the amount as determined shall be issued. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notices must specify the time of holding the election, the amount of bonds proposed to be issued; and said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers; provided, that no informalities in conducting such an election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words 'Bonds—yes,' or 'Bonds—no,' or words equivalent thereto. If a majority of the votes cast are 'Bonds—yes,' the board of directors shall cause bonds in said amount to be issued; if a majority of the votes cast at any bond election are 'Bonds—no,' the result of such election shall be so declared and entered of record. * * * The principal and interest shall be payable at the place designated therein." * * *

"SEC. 17. Said bonds, and the interest thereon, shall be paid by revenue derived from an annual assessment upon the real property of the district; and all the real property in the district shall be and remain liable to be assessed for such payments as hereinafter provided."

"SEC. 18. The assessor must, between the first Monday in March and the first Monday in June, in each year, assess all real
212 property in the district, to the persons who own, claim, have the possession, or control thereof, at its full cash value." * * *

"SEC. 22. The board of directors shall then levy an assessment sufficient to raise the annual interest on the outstanding bonds, and at the expiration of ten years after the issuing of bonds of any issue

must increase said assessment to an amount sufficient to raise a sum sufficient to pay the principal of the outstanding bonds as they mature. The secretary of the board must compute and enter in a separate column of the assessment book the respective sums, in dollars and cents, to be paid as an assessment on the property therein enumerated. When collected, the assessment shall be paid into the district treasury, and shall constitute a special fund, to be called the 'bond fund of —— irrigation district.' In case of the neglect or refusal of the board of directors to cause such assessment and levy to be made as in this act provided, then the assessment of property made by the county assessor and the State board of equalization shall be adopted, and shall be the basis of assessments for the district, and the board of supervisors of the county in which the office of the board of directors is situated shall cause an assessment-roll for said district to be prepared, and shall make the levy required by this act, in the same manner and with like effect as if the same had been made by said board of directors, and all expenses incident thereto shall be borne by such district. In case of the neglect or refusal of the collector or treasurer of the district to perform the duties imposed by law, then the tax collector and treasurer of the county in which the office of the board of directors is situated must, respectively, perform such duties, and shall be accountable therefor upon their official bonds as in other cases."

"SEC. 23. The assessment upon real property is a lien against the property assessed, from and after the first Monday in March 213 for any year; and such lien is not removed until the assessments are paid or the property sold for the payment thereof."

Sections 24 to 33 inclusive provide for the collection of assessments by the collector of the district and for the payment over to the treasurer of the district of all monies so collected.

In section 34 occurs the following provision: "Upon the presentation of the coupons due to the treasurer, he shall pay the same from said bond fund."

Defendant contends, that all the officers of said district, except as otherwise alleged in the complaint, are presumed to have regularly performed their duties, citing Civil Code of California, section 1963, subd. 15, and, that, inasmuch as the only dereliction of duty charged in said complaint is against the treasurer, it must be assumed, that the requisite assessments to pay the coupons sued on have been collected and placed in his hands for that purpose, and, therefore, that plaintiff has an adequate remedy by mandamus against the treasurer, available in the State courts, and, because of such remedy, cannot resort to an ordinary common-law action in the Federal courts.

This contention is fully met by the considerations, that in the Federal courts mandamus will not issue as an original, independent proceeding, but only in the exercise of a jurisdiction already acquired, (Bath *v.* Amy, 80 U. S. 244; Greene County *v.* Daniel, 102 U. S. 187; Davenport *v.* County of Dodge, 105 U. S. 237, Queensbury *v.* Culver, 86 U. S. 83; Heine *v.* Levy Commissioners, 86 U. S. 655; Waite *v.* City of Santa Cruz, 89 Fed. Rep. 619), and the present

action is to be regarded as one to establish the validity and amount of plaintiff's debt, (2 Dillon on Mun. Corp., sec. 856), an initiatory step to mandamus.

The case of Waite *v.* City of Santa Cruz, *supra*, cannot be distinguished from the case at bar, since the law providing for the payment of the bonds involved in the former case, (Statutes Cal. 1893, page 59), is the same in principle as sec. 17 of the Wright act
214 hereinbefore quoted, in other words, the bonds in both cases are payable out of special funds.

In Heine *v.* Levy Commissioners, *supra*, the Supreme Court of the United States says:

"The question thus presented by the present case is not a new one in this court. It has been decided in numerous cases, founded on the refusal to pay corporation bonds, that the appropriate proceeding was to sue at law and by a judgment of the court establish the validity of the claim and the amount due, and by the return of an ordinary execution ascertain that no property of the corporation could be found liable to such execution and sufficient to satisfy the judgment. Then, if the corporation had authority to levy and collect taxes for the payment of that debt, a mandamus would issue to compel them to raise by taxation the amount necessary to satisfy the debt."

In County of Greene *v.* Daniel, *supra*, the same high authority speaks as follows:

"In the State courts, under the rule as stated in Shinbone *v.* Randolph Co. (*supra*), and other cases, a mandamus would lie without reducing the coupons to judgment, to compel the commissioners' court to levy and collect the taxes necessary to pay what was due. The rule is different, however, in the courts of the United States, where such a writ can only be granted in aid of an existing jurisdiction. There a judgment at law on the coupons is necessary to support such a writ. The mandamus is in the nature of an execution to carry the judgment into effect. Bath Co. *v.* Amy, 13 Wall. 244; Graham *v.* Norton, 15 Wall. 427. A suit, therefore, to get judgment on the bonds or coupons is part of the necessary machinery which the courts of the United States must use in enforcing the claim, and the jurisdiction of those courts is not ousted simply because in the courts of the State a remedy may be afforded in another way."

To hold, that, because mandamus is available in the first instance in the State court, but not in the Federal court, therefore
215 plaintiff must sue in the former, would be to hold, in effect, that Federal jurisdiction can be ousted by State law, which, we know, is not the case. (Lincoln County *v.* Luning, 133 U. S. 529; Hyde *v.* Stone, 20 Howard 175; Suydam *v.* Broadnax, 14 Peters 67; Bank *v.* Jolly, 18 Howard, 503; Reagan *v.* Farmers' Loan and Trust Company, 154 U. S. 420.)

In Hyde *v.* Stone, 20 Howard, 175, the court says:

"But this court has repeatedly decided that the jurisdiction of the courts of the United States over controversies between citizens of different States cannot be impaired by the laws of the States which

prescribe the mode of redress in their courts, or which regulate the distribution of their judicial power. In many cases State laws form a rule of decision for the courts of the United States, and the forms of proceeding in these courts have been assimilated to those of the States, either by legislative enactment or by their own rules. But the courts of the United States are bound to proceed to judgment and to afford redress to suitors before them, in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction. Suydam *v.* Broadnax, 14 Pet. 67; Union Bank *v.* Jolly, adm'r, 18 How. 503."

Defendant also reaches the conclusion, that mandamus is plaintiff's sole remedy by another line of reasoning, namely: that defendant's obligation is not a general obligation to pay, but only a special obligation to levy, collect and disburse the annual assessments provided for in the foregoing sections of the Wright act, and, therefore, a common-law judgment, with the ordinary writ of execution, would subject the defendant to a more burdensome liability that its contract imposes.

This argument, whatever may be the character or scope of defendant's obligation, is fully answered by what I have just said as to the Federal procedure on mandamus, and the further consideration, that a judgment, if obtained in the present action, will not enlarge or change said obligation, so far as concerns the fund
216 out of which it is payable. (United States *v.* County of Macon, 99 U. S. 592; Higgins *v.* San Diego Water Co., 118 Cal. 554; Buck *v.* Eureka, 119 Cal. 46.)

Another contention of defendant, kindred to those already noticed, is, that the coupons sued on are payable out of a special fund, and, that the complaint is bad, because of its failure to allege, that there is money in that fund sufficient to pay said coupons, citing among others, the case of Travellers' Insurance Co. *v.* City of Denver, 18 Pac. Rep. 558.

The principle of that case, doubtless, is, that the primary obligation of the city was to create a fund, and, therefore, unless the fund was in existence, plaintiff had no remedy except to compel the officers of the corporation to perform their duties and create the fund. The court says:

"The city having contracted to take certain steps to create a proper fund for the payment of the cost of constructing the sewer, and a party contracting to do the work having contracted that payment therefor should be made out of the fund so to be created, it is evident that the city is not liable, in an action upon warrants drawn on that fund, without a showing that there is money in the fund to pay the same. The primary liability of the city is upon its contract to create a fund. Bill *v.* City of Denver, 29 Fed. 344."

In the last-named case, defendant's contention is stated thus:

"It is insisted, on the part of the city, that its sole liability was the making of an assessment and levy upon this sewer district, and that, if it has failed to discharge that duty, the plaintiff's sole

remedy is by mandamus proceedings to compel it to proceed therewith."

If it be conceded, which, however, I do not decide, that the last sentence above quoted from Travellers' Ins. Co. *v.* City of Denver, namely, "The primary liability of the city is upon its con-
217 tract to create a fund," aptly characterizes the liability of the defendant herein, still the doctrine of that case, applicable where mandamus issues as an original, independent proceeding, cannot defeat the present action for the reason already stated, that, under Federal practice, said action is prerequisite to a writ of mandate.

Defendant further contends, that the complaint should have alleged a demand upon the treasurer of the county.

Such a demand, I think, was unnecessary, in view of the facts, that the law expressly requires and the bonds stipulate in terms for payment of the coupons at the office of the treasurer of the district.

Defendant further contends, that the present action cannot be maintained, because the plaintiff, should he recover judgment herein, would not then be entitled to a writ of mandate. This contention, it seems to me, is without merit. As well might recovery on a promissory note, admittedly executed by a defendant, be resisted, on the ground, that he is insolvent, and, therefore, judgment against him would be ineffectual. Plaintiff's counsel suggests, with much force, that section 14 of the judiciary act of 1789, partially embodied in Revised Statutes U. S. sec. 716, and which, as construed by the Supreme Court in Booth *v.* Amy, *supra*, and the other cases cited in same connection, authorizes mandamus only when ancillary to a jurisdiction already acquired, is similar in principle to the rule of equity practice, which requires a creditor, who desires to attack a conveyance for fraud, to first reduce his claim to judgment, citing Kent *v.* Curtis, 4 Mo. App. 121; Estes *v.* Wilcox, 67 N. Y. 266; Cates *v.* Allen, 149 U. S. 768. Whether or not under the circumstances of this case, the officers of the district are compellable to raise a fund, with which to pay off plaintiff's coupons, is a question to be determined after the plaintiff shall have obtained, if he does obtain, the judgment he seeks in this action.

218 With reference to the other objections to the complaint, that it fails to show legal notice of the election for the issuance of the bonds, and which of the bonds were exchanged for water rights and other properties, and which were sold for cash, it is only necessary to say that the complaint alleges, that the plaintiff is a *bona fide* holder of the coupons, and, that the bonds recite their issuance in conformity to law. (Lincoln *v.* Iron County, 103 U. S., 412; P. L. & T. Co. *v.* Mercer Co. 170 U. S. 593; 15 Am. & Eng. Ency. of Law, 1265; Town of East Lincoln *v.* Davenport, 95 U. S. 801; Town of Grand Chute *v.* Winnegar, 82 U. S. 355; County of Mercer *v.* Hackett, 68 U. S. 93; Brooklyn *v.* Ætna Life Insurance Co., 98 U. S. 262; Bernard's Township *v.* Morrison, 133 U. S. 523.)

Demurrer overruled.

OLIN WELLBORN, *Judge.*

(Endorsed:) No. 859. U. S. circuit court, southern district of California. Alfred Shepard *vs.* Tulare Irrigation District (a corporation) Opinion on demurrer. Filed Apr. 24 1899 Wm. M. Van Dyke, clerk, by E. H. Owen deputy

219 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

ALFRED SHEPARD, Plaintiff,
v.
TULARE IRRIGATION DISTRICT, a Corporation, Defendant. } No. 859.

Conclusions of the Court on Final Hearing.

The views announced by me in Miller *v.* Perris Irrigation District, 99 Fed. Rep. 143, are reaffirmed.

Defendant's and intervenors' objections to the testimony by plaintiff are overruled, while the plaintiff's objections to the testimony offered by the defendant and intervenors are sustained.

The contention of the defendant and intervenors, in their brief filed June 8th, 1900, that the bonds to which the coupons sued on were attached, are void, because of alleged illegalities in date and form, is, in my opinion, without merit.

Judgment will be entered for plaintiff, and plaintiff's attorney will prepare and submit to the court findings in accordance with these conclusions.

OLIN WELLBORN, *Judge.*

(Endorsed:) No. 859. U. S. circuit court, southern district of California. Alfred Shepard *vs.* Tulare Irrigation District. Filed Mar. 25 1901. Wm. M. Van Dyke, clerk.

220 At a stated term, to wit, the January term, A. D., 1901, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, southern division, held at the court-room in the city of Los Angeles on Thursday the twenty-fifth day of April, in the year of our Lord one thousand nine hundred and one.

Present: The Honorable Olin Wellborn, district judge.

ALFRED SHEPARD, Complainant,
vs.
TULARE IRRIGATION DISTRICT, Defendant; GEORGE G. Kelly and B. W. Jauchius, Intervenors. } No. 859.

In the above-entitled cause the defendant and intervenors in due time having served and filed their notice of intervention to move the court for a new trial of said cause upon the following grounds: 1. Insufficiency of the evidence to justify the findings and decision herein. 2. Errors in law occurring at the trial and excepted to by said defendant and intervenors,—stating in said notice that said motion would be made on the minutes of the court, and the plead-

ings and the proceedings on file in the clerk's office, and that on said grounds, minutes, pleadings and proceedings the said defendant and intervenors moved the court to set aside and vacate the decision and findings hereinbefore made, and to grant a new trial of this action, and, pending said motion, defendant and intervenors having duly moved the court to set aside and vacate the said findings and to make and enter findings in favor of the defendant, on the ground that there was no evidence whatever, to justify the findings aforesaid in favor of the plaintiff, and that on all the evidence in the cause findings should be made in favor of the defendant and intervenors; and pursuant to the stipulation and con-
221 sent of counsel for the respective parties, said motion having been called up on this 25th day of April, 1901, being a day in the January term, A. D. 1901, of said circuit court, and having been submitted to the court on behalf of defendant and intervenors, for the consideration and decision of the court,—it is now by the court ordered that said motion be, and the same hereby is denied, to which ruling defendant and intervenors each and severally and respectively now duly except.

222 In the Circuit Court of the United States in and for the Ninth Circuit, Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant; GEORGE G. KELLY and B. W. Jauchius, Intervenors.

Bill of Exceptions.

Be it remembered, that the above-entitled action coming on regularly for trial upon the 13th day of April, A. D. 1900, in the above-entitled court, before the court sitting without a jury, a jury trial having been by the parties duly waived by a stipulation in writing, in the words and figures following: "A jury trial in the above-entitled action is hereby waived," signed by the attorneys for the respective parties and duly filed with the clerk prior to the commencement of the trial; S. F. Leib, Esq., appearing as attorney for the plaintiff, and C. L. Russell and G. W. Zartman, appearing as attorneys for said intervenors, and R. M. F. Soto, George Maxwell, John Garber and C. L. Russell, and G. W. Zartman, appearing as attorneys for said defendant. The following proceedings were had, evidence received, rulings made, and exceptions taken.

There was produced to the court a written stipulation duly made and signed by the respective attorneys herein for both parties, plaintiff, defendant and intervenors, and filed herein on the 29th day of March, 1900, and it was thereupon agreed by all the parties that said stipulation had been so made as aforesaid, and that said stipulation was and is in the words and figures following, to wit.

223 In the Circuit Court of the United States, Ninth *District* in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant.

It is hereby stipulated by all parties hereto that the following are facts, and on the trial of this action they, or any of them, may be offered in evidence as facts by any party to this action; and when so offered, the party not offering the same may object to such facts, or any of them, being admitted in evidence, upon legal grounds which may exist against their admissibility.

1st.

The plaintiff is and for ten years and more last past has been a citizen of and residing in the State of Michigan, in the United States of America, and at all such times has been and yet is a non-resident of the State of California, and has not at any time been a resident or citizen of the State of California, or residing therein. And David Shepard, and F. G. Shepard, are, and for ten years last past have also been residents and citizens of and residing in said State of Michigan.

2nd.

That under the provisions of an act of the legislature of the State of California, entitled: "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water for irrigation purposes." Approved March 7th, 1887, an effort was made in the county of Tulare, State of California, to form an irrigation district known as Tulare irrigation district,
224 and such proceedings in that behalf were had, that what purported to be a certified copy of an order of said board of supervisors was duly filed with the county recorder of said county on the 14th day of September, 1889, a certified copy of which certified copy is hereunto annexed marked "A." The persons declared by said order of the board of supervisors to have been elected as officers of said district immediately thereafter purporting to organize as such officers and thereupon entered upon their duties as such officers the same as though said district had been legally organized, and as though they had been legally elected such officers, and they and their successors in office have ever since continued to act as such officers and to maintain the name of "Tulare irrigation district," and in its name have caused the defendant to act as though it was in every respect legally organized as an irrigation district under said act of the legislature, and in that behalf has at all such times had the name "Tulare irrigation district" printed upon a sign above a door in front of an office in which the archives and papers of said defendant are kept; and its board of directors have met from time to time in such room from the time of such purported organization thereof until the present, weekly and sometimes

oftener, averaging twice a month, and in the year 1891, 1892, 1893, its board of directors purported to issue bonds of such Tulare irrigation district in the sum of $500,000, being 1,000 bonds of the face value of $500 each, as hereinafter stated, and levied assessments on the property claimed to be embraced in said district, purporting to act in so doing under the said act of the legislature, and previous to July 1st, 1896, it assessed, levied and collected taxes upon the lands claimed to be in such district of over $100,000, and paid the same out as interest upon such bonds; that it has engaged in litigation as plaintiff in — suits, — of them, before the issuance of said bonds, and therein alleged that it was a corporation under the pro-
225 visions of the said act of the legislature, and from said time of its said purported organization until the present time, whatever it has done and performed, it has done and performed in the same manner as if it had been legally organized as such district in full compliance with the law, and so continues to act and hold itself out as such corporation organized under said law.

3rd.

That all lands embraced in the limits of said district are and always have been in the said county of Tulare.

4th.

That after certain proceedings had been had by the board of directors of said defendant, the said defendant called a special election of the electors of said district at which should be submitted to such electors possessing the qualifications prescribed by such act of the legislature, whether or not bonds of such district should be issued in the amount of said $500,000; said election being called for the 7th day of June, 1890; that at said election there were cast 398 votes of the electors of said district of which 348 voters voted for such proposed bonds, and fifty voters voted against the same; and thereupon and on or about July 1st, 1890 the said board of directors of said district ordered that the bonds of said district in the sum of $500,000 divided into 1,000 bonds of $500 each and numbered consecutively from one to one thousand be issued by said district, and that said bonds and the coupons thereto annexed be in the form as alleged in the complaint in this action.

5th.

Thereupon the directors of said district caused what purported to be one thousand bonds of said district to be printed, and each of them, together with the coupons thereto attached were in the
226 form as alleged in the complaint in this action, and all of them were of precisely like tenor and form, and were signed by the president and secretary of said defendant and the seal of the board of directors of said defendant was affixed to each of said bonds, and all of said bonds were so signed and sealed before being issued. A copy of one of said bonds numbered 400 is annexed to the complaint in this action marked "Exhibit A." That coupons for the payment of interest of said bonds were attached

thereto and signed by the secretary of said defendant, and each coupon had on the upper right-hand corner thereof and on the back thereof, the number of the installment of interest for which said coupons was given, and had on the lower left-hand corner thereof the number of the bond to which it was attached and all of the coupons of each of the other of said bonds save as to the number placed thereon of the bonds to which they were attached and each of said coupons for interest on said bonds were precisely of the same tenor and form as each of the other coupon for interest on said bonds, save as to the amount of the interest for which it was given and save as to the said number placed thereon to show the installment of interest for which said coupon was given, and all of said coupons were so signed and numbered before the issuance of any of said bonds. That a copy of one of said coupons, to wit: the one attached to bond number 400 given of the twelfth instalment of interest is attached to said complaint marked "Exhibit B."

6th.

That said bonds were precisely and consecutively numbered one to one thousand inclusive and were all disposed of by the said board of directors of said defendant during the years 1891, 1892 and 1893.

7th.

That as a result of the disposition of such bonds as aforesaid the defendant was enabled to and did build and construct a system of canals, ditches and laterals by and through which lands in such district varying from many thousands of acres in the wet year of 1893 to only a few hundred acres in the dry years of 1898 and 1899 were irrigated.

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8th.

That the treasurer of said district promptly paid the interest coupons on each of said bonds every six months as such coupons fell due, from the time the said bonds were disposed of by said directors as aforesaid until July 1st, 1896.

9th.

That no one ever brought any suit or action to prevent the issuance of any of said bonds.

10th.

That no suit or action was ever brought to annul or cancel or have declared void any of said bonds until after the year 1896, nor was any suit or action ever brought until after the year 1895 wherein the validity of any of said bonds was in any way questioned, nor until after the year 1896, wherein the validity of any of said bonds 342 to 386 inclusive *were* in any way questioned except as to the constitutionality of the said act of the said legislature of March 7th, 1887, which action involving such constitutionality of such law was brought in November, A. D., 1895.

11th.

That the plaintiff at the commencement of this action was the holder of the coupons which are alleged in the complaint herein to be held and owned by him and on which this action is brought and is the owner thereof as against any of the other persons or corporations hereinafter mentioned. That said coupons were all, at the time of the printing said bonds numbered respectively from one to one thousand as aforesaid respectively attached to and a part of said bonds bearing their respective numbers.

12th.

That plaintiff becomes the holder of such coupons on which he has brought this action as follows:

In the first part of the year 1892 one Wesley A. Jacobs sold and delivered to the following persons the following of said one thousand bonds for (and then received from them therefor) the
228 price of ninety cents on the dollar for the face value of said bonds, to wit: Bonds numbered 625, 626, 823 to 831 inclusive, 313, 389 to 396 inclusive, 634 to 636 inclusive, to Alfred Shepard, the plaintiff herein.

Bonds numbered 832 to 840 inclusive, 310 to 312 inclusive to David Shepard.

Bonds numbered 814 to 822 inclusive, 598, 579, 583, 436, 437, 438, 616 to F. G. Shepard. Bonds 434 and 435 to Mary A. Chaffin.

On January 13th, 1892, R. Linder sold and delivered to F. G. Shepard the following of said one thousand bonds for (and then received from said F. G. Shepard therefor) the price of eighty-five cents on the dollar of the face value of said bonds to it, bonds numbered 722, 723, 724, 938 to 941 inclusive, 961, 962, 982 to 1000 inclusive, 720, 721, 725, 728, 746 to 749 inclusive, 934 to 937 inclusive, 314, 433, 589 to 602 inclusive, 719. On March 10th, 1893, F. G. Shepard sold and delivered to Alfred Shepard the plaintiff herein the following of said one thousand bonds for (and then received from said Alfred Shepard therefor) the price of eighty-six cents on the dollar of the face value of said bonds, to wit: bonds numbered 720, 721, 725, 728, 746 to 749 inclusive, 934 to 937 inclusive.

On March 10th, 1893, F. G. Shepard sold and delivered to David Shepard the following of said one thousand bonds for (and then received from Dsaid David Shepard therefor) the price of eighty-six cents on the dollar of the face value of said bonds, to wit: bonds numbered 314, 433, 589, to 602 inclusive, 719.

The said prices so paid to said Wesley A. Jacobs for the said bonds so purchased from him and the said prices so paid to said R. Linder for said bonds so purchased from him and the said prices so paid to said F. G. Shepard for the said bonds so purchased from him were the full value of said bonds so purchased at the time they were so purchased and each of said purchasers so pur-
229 chasing the same did so purchase the same in good faith for full value in the usual course of business without any actual

notice or knowledge of any defect, infirmity or invalidity of said bonds or any of them and without any actual notice or knowledge of the non-performance or non-observance of any requirements of the law necessary to their validity but so purchased the same under the full belief that all requirements of the law necessary to their validity had been performed and observed and complied with.

In December, 1896, said David Spehard gave, transferred and delivered to his two sons, Alfred Shepard and F. G. Shepard all of said bonds theretofore purchased by him as aforesaid, to wit: To Alfred Shepard bonds numbered 832, 834, 836, 838, 840, 311, to 314, inclusive, 433, and 589, 591, 593, 595, 597, 599, 601, 603; to F. G. Shepard bonds numbered 310, 312, 833, 835, 837, 839, 315, 588, 590, 592, 594, 596, 598, 600, 602, 719.

In the year 1897, Laura A. Chaffin died, and in that year said one thousand bonds numbered 434 and 435 were distributed as a part of her estate to her two daughters Fannie L. Shepard, and Mary A. Chaffin, to wit: bond numbered 434 to Fannie L. Shepard and bond numbered 435 to Mary A. Chaffin.

In the year 1898 and before the first day of October of that year the interest coupons on said bonds were assigned, transferred and delivered to Alfred Shepard the plaintiff herein by the following parties as follows, to wit:

By Fannie L. Shepard and Mary A. Chaffin the interest coupons numbered 12 to 16 inclusive taken from said bonds numbered 434 and 435 and said plaintiff has ever since been the owner and holder thereof.

By F. G. Shepard the interest coupons numbered 12 to 16, inclusive taken from said bond- numbered 312, 315, 436, 437, 438, 562, 578, 589, 586, 588, 590, 592, 594, 596, 598, 600, 602, 607, 608, 616, 627, 628, 637, 638, 639, 712, 722, 723, 724, 814 to 822 inclusive, 833, 835, 837, 839, 838, to 941 inclusive, 961, 962, 982, to 1000 in-
230 clusive, excepting coupon numbered 12 taken from said bond- numbered 982 to 988 inclusive, and plaintiff has ever since been the owner and holder thereof.

On December 17th, 1892, R. Linder sold and delivered to the San Jose Safe Deposit Bank of Savings, a corporation, having its principal place of business in San Jose, California, the following of said one thousand bonds for (and then received from said bank therefor) the price of eighty-six and one-fourth cents on the dollar of the face value of said bonds, to wit, bonds numbered 942, 943, 948 to 952 inclusive, 959, 978, to 981 inclusive.

That previous to said purchase and in the year 1892 the said R. Linder borrowed from said San Jose Safe Deposit Bank of Savings the sum of fifty-five thousand dollars upon the collateral security of, and then giving and delivering to said bank as collateral security to secure the payment of said indebtedness the following of said one thousand bonds, to wit: bonds 398 to 418 inclusive, 432, 439 to 452 inclusive, 455 to 468 inclusive, 548, 734, 735, 759, to 813 inclusive, 841 to 916 inclusive, being one hundred bonds pledged to secure the payment of said indebtedness. That at the time of borrowing

said $55,000 said Linder gave said bank his promissory notes to evidence the same, and also his written pledge of said one hundred bonds to secure the payment thereof.

That said indebtedness became due and was unpaid, whereupon said bank on February 11th, 1898 filed its complaint against said Linder for a sale of said pledged bonds and such proceedings were regularly had in such action that on June 25th, 1898 said bank obtained a valid decree in said action against said Linder adjudging that there was then due and unpaid from said Linder for and upon said indebtedness the sum of sixty-seven thousand four hundred and thirty-five dollars, and further adjudging that the payment of the same was secured by said pledge of said one hundred
231 bonds, and ordered, — adjudged that said bonds be sold at public sale for the payment of said indebtedness, and that said bank might become a purchaser at said sale. That thereafter, and on July 22nd, 1898, said bonds were offered at public sale, as provided in said decree, by the commissioner appointed and named by the court in said decree for that purpose; and thereupon, said bank bid the full amount of its said judgment, to wit: the sum of sixty-seven thousand four hundred and thirty-five dollars. That such bid was the highest bid made at said sale for such bonds, and thereupon, the same were sold by such commissioner to said bank for said sum, and said commissioner thereupon executed and delivered to said bank a bill of sale of said bonds, in pursuance of said sale, under said decree, and reciting the same as his authority for making said sale. That at the time of filing said complaint, and at all times thereafter, until and including July 22nd, 1898, said Linder was utterly and entirely insolvent, and without any property whatever.

That said bank bought said twelve bonds, so bought by it, for 86½ cents on the dollar, of the face value thereof, as aforesaid, in good faith, for full value, in the usual course of business, without any actual notice or knowledge of any defect, infirmity or invalidity of such bonds, or any of them, and without any actual notice or knowledge of the non-performance or non-observance of any requirements of the law, necessary to their validity, but so purchased the same under the full belief that all requirements of the law necessary to their validity, had been performed and complied with.

That said bank would not have loaned any of said money to said Linder except upon security, and it loaned said money upon and took said one hundred bonds so pledged to it, as a pledge to secure said loans of said $55,000, as aforesaid, in good faith, in the usual course of business, without any actual notice or knowledge of any defect, infirmity or invalidity of such bonds, or any of them,
232 and without any actual notice or knowledge of the non-performance or non-observance of any requirement of the law necessary to their validity, but so loaned said money and took the said bonds, in pledge, as aforesaid, under the full belief that all requirements of the law, necessary to the validity of said bonds, had been performed and observed and complied with.

After July 22nd, 1898, and before October 1st, 1898, said bank assigned, transferred and delivered to Alfred Shepard, the plaintiff

herein, the interest coupons upon said bonds, so acquired by it, as follows, viz: The interest coupons numbered 12, taken from said bonds numbered 398 to 418 inclusive, 439 to 453 inclusive, 455 to 468 inclusive, 759 to 766 inclusive, 768 to 785 inclusive, 787 to 800 inclusive, 846, 858, 902, 913, 915, 942, 943, 948 to 952 inclusive, 959, 978 to 981 inclusive, and the interest coupon number 13 taken from said bonds numbered 432, 548, 734, 735, 767, 786, 801, 803 to 806 inclusive, 841 to 845 inclusive, 847 to 857, inclusive, 859 to 901, inclusive, 903 to 912 inclusive, 914, 916, and said plaintiff has ever since been the owner and holder thereof.

That prior to June, 1891, the board of directors of Tulare irrigation district had advertised for bids for a certain portion of its bonds, in conformity with the requirements of the said act of the legislature of the State of California. In answer to such advertisement, a bid was received from W. A. Ray for the purchase of a designated portion of such bonds at ninety cents on the dollar. Such bid was accepted by such board, and the sale of such portion of such bonds including those numbered 342 to 386 inclusive, was awarded by said board of directors to him. Thereafter, and before said Ray had paid for and taken such bonds, he being unable to pay for the same, and being unable to get any one else to take them off his hands, the said district was greatly in need of money to the extent of $20,000, in carrying on the construction of its works, and its directors sought to borrow such amount from the Bank of Tulare, a corporation, having its principal place of business in the city of Tulare, where the said district had its offices, said directors offering at the same time to furnish the note of twenty-five of the tax-payers of said district, to secure the payment of said loan, and to pledge as many of its unissued bonds as
233 might be required by said bank, to secure the payment of said loan. The said bank thereupon consulted its attorney and was advised by him that the district had no power to either borrow money or to pledge its bonds, of which advice said directors were then informed by said bank. Said bank, however, at the same time stated, that it would loan said money to the signers of such a note, and that the same could be secured by a pledge of forty-five of the said one thousand bonds of said district, if such bonds were pledged by a *bona fide* purchaser thereof. Thereupon, said W. A. Ray gave an order to said district to deliver said Linder forty-five of said bonds, the purchase of which had theretofore been awarded, as aforesaid, to said Ray upon said Linder paying said district for the same, at the rate of ninety cents on the dollar, and thereupon a note to such bank for such amount, was signed by twenty-five tax-payers of such district, including five persons who at that time were the directors of such district, and also by R. Linder and attached to said note was what purported to be a written pledge of forty-five of such one thousand bonds, numbered 342 to 386 inclusive, signed by said R. Linder, and said five persons who were then such directors, but said note did not purport to be the note of said district nor of said directors as such, nor did said pledge purport to be made or signed by said district nor by said directors

as such, but said note and said pledge purported to be simply the note and pledge of the persons so signing the same, as private individuals. Thereupon, and with the consent of said Linder and for the purpose of making and cotemporaneously, said note and pledge was delivered to said bank, together with said bonds, the secretary of said district handing said bonds to said bank, on the verbal order of said Linder, whereupon the said bank on the verbal order of said Linder, paid said money to said district, where it was at once put in the construction fund of said district and within a few days thereafter, it was used and paid out by said district
234 on warrants drawn by the board of directors thereof, the secretary of said district at the same time, or within a few months thereafter, entered on the register of sale of the bonds of said district that said bonds were sold to said R. Linder on the order of said W. A. Roy.

At the time of such transaction, it was agreed by the said directors, that inasmuch as the said note was to bear interest at the rate of twelve per cent. per annum, (which was the current rate in that locality at that time) and the bonds pledged were only bearing interest at the rate of six per cent. per annum, the district, until said note was paid would, in the meantime, pay the difference of interest between the rate designated in said note and the rate designated in said bonds. This, the district continued to do until the said bank took a written assignment of said forty-five bonds, signed by the same parties who signed the said pledge, in full payment of said note, whereupon, said bank surrendered said note to the signers thereof as fully paid. This was in November, 1896. Said district also during all such time, regularly paid to said bank the interest coupons upon said forty-five bonds, as they fell due. No payment of any part of the principal of said note has ever been paid or tendered, except as above stated. The said Bank of Tulare has been in possession of said forty-five bonds from June the 3rd, 1891 to the present time.

That said bank bought said forty-five bonds and took said assignment thereof, in November A. D., 1896, as aforesaid, in good faith, in the usual course of business, without any actual notice or knowledge of any defect, infirmity or invalidity of such bonds, or any of them, and without any actual notice or knowledge of the non-performance or non-observance of any requirement of the law necessary to their validity, but so purchased the same under the full belief that all the requirements of the law, necessary to their validity had been performed and observed and complied with.

235 That said bank loaned said twenty thousand dollars upon said note and bonds, and took said bonds so pledged to it, as a pledge to secure said loan as aforesaid, in good faith, in the usual course of business, without any actual notice or knowledge of any defect, infirmity or invalidity of such bonds, or any of them, and without any actual notice or knowledge of the non-performance or non-observance of any requirement of the law, necessary to their validity, but so took the same in pledge under the full belief that all the re-

quirements of the law necessary to their validity, had been performed, obs-rved and complied with.

That said bonds never were of a greater value than ninety cents on the dollar, of their face value.

That in the year 1898, and prior to the 1st day of October thereof, the said Bank of Tulare assigned, transferred and delivered to Alfred Shepard, the plaintiff herein, the interest coupons numbered 16, on said bonds numbered 342 to 356 inclusive, and said plaintiff has ever since been the holder and owner thereof.

That in the years 1892, 1893 and 1894, or in some of those years, E. Lathrop, bought of said one thousand bonds in the open market, from parties who had them in possession, apparently as owners, bonds numbered 476, 478, 490, 491 and 492, at the then current prices for which said bonds were then sold, but of whom he bought these bonds he cannot now remember or state, as he bought and sold other of said one thousand bonds at about the same rate; that he bought said bonds 476, 478, 490, 491 and 492, as aforesaid, in good faith, for full value, in the usual course of business, without any actual notice or knowledge of any defect, infirmity, or invalidity of such bonds, or any of them, and without any actual notice or knowledge of the non-performance or non-observance of any requirement of the law necessary to their validity, but so purchased the same under the full belief that all the requirements of the law necessary to their validity, had been performed and observed and complied with.

236 That in the year 1898 and prior to the 1st day of October thereof, the said E. Lathrop assigned, transferred and delivered to Alfred Shepard, the plaintiff herein, the interest coupons numbered 16 from said bonds 476, 478, 490 491, 492, and said plaintiff has ever since been the holder and owner thereof.

That the fact that the word "actual" is used in the phrase "actual notice or knowledge" hereinbefore occurring in several places, shall not be deemed as creating an inference that constructive notice or knowledge existed in such cases.

13th.

That a petition, a copy of which is hereunto annexed, marked "Exhibit B," was on the 1st day of July, 1889, filed with and presented to the board of supervisors of Tulare county at a regular meeting of said board, and no other petition for the organization of Tulare irrigation district has ever been presented to or filed with said board of supervisors; which said petition was printed and published for two weeks during the month of June, 1889, in a newspaper printed and published in said Tulare county, to wit: the Weekly Tulare Register.

14th.

That during the time said petition was printed and published in said newspaper, and immediately following and below said petition, as published, and in the same column of the paper was printed a notice, a copy of which notice is hereunto annexed and marked "Exhibit C," and no other notice of the hearing of said or any peti-

tion for the organization of Tulare irrigation district, was ever given or published. Said notice was in the same type as said petition in said publication, and enclosed therewith, between two black lines across the column, the first at the head of such petition and the last at the end of such notice.

237

15th.

That at the time of the presentation of said petition the said board of supervisors caused to be entered on the minutes of said board, the order set forth in paragraph VIII of page 17 of the defendant's answer herein, and on July 6th, 1889, said board caused to be entered on its said minutes, an order, a copy of which is alleged in said paragraph VIII to have been entered by said board on that date, and thereafter, on July 11th, 1889, said board caused to be entered on its minutes the order hereunto annexed, marked "Exhibit D."

16th.

That on the 2nd day of September, 1889, the clerk of said board of supervisors, entered upon their minutes an order purporting to have been passed by said board, a true copy of which order in full, is hereunto annexed, and marked "Exhibit E."

17th.

That said petition so presented July 1st, 1889, was not copied or set out at length in the minutes of the said board of supervisors, nor in any way referred to or identified than as appears in the orders of said board, hereinbefore set forth, and hereto annexed.

18th.

That said board caused to be filed for record in the office of the recorder of said Tulare county, on September 14, 1889, the certified copy of the order hereunto annexed, marked "Exhibit A," hereinbefore referred to, and no other order of said board relating to the organization of said district, was ever filed in the office of the county recorder of said Tulare county. That an election was called and held as recited in said "Exhibit A," of which due notice was given and in such notice the lands of such proposed district were the same as those recited in said "Exhibit A," as constituting
238 such proposed district.

19th.

No other orders or proceedings relating to the organization of said district, were ever made or had by said board of supervisors, than as herein stipulated, and as recited in said exhibits.

20th.

That G. G. Kelley and B. W. Jauchius are the owners of the lands alleged in said complaint in intervention, as therein stated; that said G. G. Kelley is a citizen of the United States and a resident of the State of Massachusetts, and that said B. W. Jauchius is a citizen of the United States, and a resident of the State of California.

21st.

And nothing herein contained shall be construed to prevent the defendant from showing or maintaining that the plaintiff was, or his predecessors in interest were, affected with constructive notice or knowledge, nor that, notwithstanding his or their want of actual notice or knowledge, the plaintiff is still not entitled to recover, by reason of any facts showing that the bonds are invalid, even in the hands of purchasers for value, without actual notice or knowledge.

239 "EXHIBIT A."

The board of supervisors of Tulare county, State of California, met as a board of canvassers, on Monday, the second day of September, 1889, for the purpose of determining the result of the special election held in said Tulare county, as follows: Held on the 24th day of August, 1889, to vote for and against the organization of the Tulare irrigation district, and officers therefor.

Present: D. V. Robinson chairman T. E. Henderson James Barton, W. J. Newport, supervisors.

Absent: Supervisor J. H. Woody.

And the returns of said election being filed with the county clerk and *ex officio* clerk of said board, they were this day opened and canvassed by said board of supervisors, from which it appears that there were cast for "Irrigation district, Yes" and "Irrigation district, No," and for each of the persons hereinafter named for the respective offices of such proposed irrigation district, the following votes, to wit:

In the Tulare Irrigation District.

	Division No. 1.	Division No. 2.	Division No. 3.	Division No. 4.	Division No. 5.	Total.
Irrigation district—Yes	27	27	13	403	7	484
" " No	.....	1	.....	6	.....	7
For director, Division No. 1, A. P. Merritt	26	27	13	409	7	483
For director, Division No. 2, W. B. Cartmill	27	27	13	409	7	484
For director, Division No. 3, J. W. Mackie	27	27	13	409	7	484
For director, Division No. 4, S. Richardson	27	27	13	409	7	484
For director, Division No. 5, J. F. Gibson	27	27	13	409	7	484
For treasurer, John A. Goble	26	27	13	409	7	483
For assessor, A. O. Erwin	27	26	13	409	7	483
For collector, Alfred Fay	27	26	13	409	7	483

240 Now, therefore, we, the board of supervisors of Tulare county, State of California, do hereby declare that at the special election held in said Tulare county on Saturday the 24th day of August, 1889, for the purpose of voting for and against the for-

mation of a proposed irrigation district, to be known as the Tulare irrigation district, and for officers for such district, the number of votes are correct as set forth in the foregoing statement.

That the several candidates for the respective offices named "Irrigation district, Yes," and "Irrigation district, No," received the whole number of votes set opposite their respective names and places in said statement.

And we further declare the territory embraced in the following-described limits, to wit:

Commencing at the quarter-section corner on the east side of section twenty (20) in township 19 south of range 25 east, Mount Diablo base and meridian; running thence west one-half (½) mile; thence north one-fourth (¼) mile; thence west one half (½) mile; thence north one-half (½) mile; thence west one-half (½) mile; thence south one-half (½) mile; thence west one-half (½) mile; thence south one-fourth (¼) mile; thence west one-half (½) mile; thence south three-fourths (¾) mile; thence west one-half (½) mile; thence south one (1) mile; thence west about two hundred and fifty (250) rods, more or less, to the east side of the Southern Pacific Railway right of way; thence a little west of north on said railway line one-half (½) mile more or less to the center section line running east and west through section twenty-seven in township nineteen (19) south, range twenty-four east; thence east one-half (½) mile more or less, to quarter-section corner on the east side of said section twenty-seven (27); thence north one-half (½) mile; thence west one-fourth (¼) mile; thence north one (1) mile; thence west one-fourth (¼) mile; thence south one-
241 half (½) mile; thence west one-half (½) mile; thence north one-half (½) mile more or less to the east side of the Southern Pacific Railway right of way; thence northerly along the said the east line of said right of way one (1) mile more or less to the north line of section sixteen (16) township nineteen (19) south, range twenty-four east; thence west two and one-half (2½) miles more or less to the northwest corner of section eighteen (18) township nineteen (19) south, range twenty-four (24) east; thence south one-half (½) mile more or less to the northerly line of the United States survey of the swamp and overflowed land along the line of the Packwood creek; thence southwesterly following the meanders of said line of the swamp and overflowed land five (5) miles more or less to the township line between townships nineteen (19) and twenty (20) south, at a point at or near the quarter-section corner of the south side of section thirty-three, township nineteen (19) south, range twenty-three (23) east; thence east on said township line three-fourths (¾) miles more or less to the southwest corner of the southeast quarter (¼) of the southwest quarter (¼) of section thirty-four (34) township nineteen (19) south, range twenty-three (23) east; thence north one-fourth (¼) mile; thence east one-fourth (¼) mile; thence north three-fourths (¾) miles; thence east one and one-half (1½) miles; thence north one (1) mile; thence east one-half (½) mile; thence south one (1) mile; thence east one and one-half (1½) miles; thence south one (1) mile; thence west one (1) mile; thence south

(1) mile; thence west two (2) miles; thence south one and one-half (1½) miles; thence east one-half ½ mile; thence north one-half (½) mile; thence east one (1) mile; thence north one-half (½) mile; thence east one-half (½) mile; thence north one-half (½) mile; thence east one (1) mile; thence north three-fourths (¾) miles; thence east one-half (½) mile; thence south one-fourth (¼) mile; thence east
242 one half (½) mile; thence south one-fourth (¼) mile; thence west one-half (½) mile; thence south one-fourth (¼) mile; thence east one (1) mile; to the quarter-section corner on the south side of section four (4) in township twenty (20) south, range twenty-four (24) east; thence south one-half (½) mile; thence west one-fourth (¼) mile; thence south one-fourth (¼) mile; thence west three-fourths (¾) mile; thence south three-fourths (¾) mile; thence west one (1) mile; thence south one-half (½) mile; thence west two and one-half (2½) miles; thence south two (2) miles; thence east one (1) mile; thence north one-half (½) mile; thence east one (1) mile; thence south one-half (½) mile; thence east one-half (½) mile; thence north one-half (½) mile; thence east one-half (½) mile; thence south one and one-fourth (1¼) miles; thence east one-half (½) mile; thence south two and one-fourth (2¼) miles; thence east one (1) mile, more or less, to the channel of Elk bayou; thence following the meanderings of said Elk bayou in a northeasterly direction about three (3) miles more or less to the one-half (½) section line running north and south through section two (2) township twenty-one (21), south, range twenty-four (24) east; thence north on said half-section line one-half (½) mile more or less to the northwest corner of the south one-half (½) of northeast one-fourth (¼) of said section two (2); thence east one-half (½) mile; thence north three-fourths (¾) miles; thence west one-half (½) mile; thence north one and one-fourth (1¼) miles; thence west one-fourth (¼) mile; thence north about sixty (60) rods to the line of the swamp and overflowed land on the northeast one-fourth (¼) of section twenty-seven (27) township twenty (20) south, range twenty-four (24) east; thence along the meanderings of said line of the swamp and overflowed land in a northeasterly direction about eighty (80) rods more or less, to where said line crosses section line between sections twenty-two (22) and
243 twenty-seven (27) in township twenty (20) south, range twenty-four (24) east; thence east on said section line ten (10) rods more or less to the southeast corner of said section twenty-two (22); thence north one-fourth (¼) mile; thence east one-half (½) mile more or less to the Southern Pacific railway; thence northerly along said railway twenty (20) rods more or less to north line of the swamp and overflowed land on section twenty-three (23) township twenty (20) south, range twenty-four (24) east; thence northeasterly about three (3) miles more or less, following the meanderings of said northerly line of said swamp and overflowed land to the east line of section eighteen (18) at or near the quarter-section corner on the east side of said section eighteen (18) in township twenty (20) south, range twenty-five (25) east; thence north one-half (½) mile more or less to the northeast corner of said section eighteen (18); thence

west one-fourth (¼) mile; thence north three-fourths (¾) miles; thence west one-half (½) mile; thence north three-fourths (¾) mile; thence east one-fourth (¼) mile; thence north one-half (½) mile; thence east one-half (½) mile; thence north one-half (½) mile; thence west one-half (½) mile; thence south one-half (½) mile; thence west one (1) mile; thence south one-half (½) mile; thence west one-half (½) mile; thence north one-half (½) mile; thence east one-half (½) mile; thence north one-half (½) mile to center of section thirty-six (36) township nineteen (19) south, range twenty-four (24) east; thence west one-half (½) mile; thence north one-half (½) mile; thence east one-half (½) mile; thence north one-half (½) mile; thence east one (1) mile; thence south one-half (½) mile; thence east one-fourth (¼) mile; thence north one-half (½) mile; thence east one-fourth (¼) mile; thence north one-half (½) mile; thence east one (1) mile more or less,
244 to the line of the swamp and overflowed land on the northeast one-fourth of section twenty-nine (29), township nineteen (19) south, range twenty-five (25) east, thence southwesterly following the meanderings of said line of said swamp and overflowed land about three-fourths (¾) of one mile, more or less, to the east line of the west one-half (½) of the northwest one-fourth (¼) of section twenty-nine (29) in township nineteen south, range twenty-five (25) east; thence south on said line thirty (30) rods, more or less, to the southeast corner of said west one-half (½) of the northwest one-fourth (¼) of said section twenty-nine (29); thence west thirty (30) roads more or less to the line of the swamp and overflowed land; thence southwesterly following the meanderings of said line of swamp and overflowed land about forty (40) rods to the west line of said section twenty-nine (29); thence south on said section line about one hundred and forty (140) rods more or less to southwest corner of said section twenty-nine (29); thence east one (1) mile; thence north one hundred and twenty (120) rods; thence west forty (40) rods; thence north forty (40) rods; thence east forty (40) rods; thence north one (1) mile to place of beginning. Excepting therefrom, the southeast one-fourth (¼) of the southeast one-fourth (¼) of section twenty-four (24); and the north one-half (½) of the north one-half (½) and southeast one-fourth (¼) of the northwest one-fourth (¼) of section twenty-five (25), all in township nineteen (19) south, range twenty-five (25) east. Also, the south one hundred and forty-two (142) acres of the southwest one-fourth of section three (3). Also the east one-half and the northeast one-fourth (¼) and the north one-half (½) of the southeast one-fourth (¼) of section fifteen (15). Also the west one-half (½) of the northwest one-fourth (¼) of section twenty-three (23). Also the northeast one-fourth (¼) of the northwest one-fourth (¼), and the north one-half (½) of the northeast one-fourth (¼) and the fractional forty-four acres of the southeast one-fourth
245 (¼) of section twenty-eight (28), all in township twenty (20) south, range twenty-four (24) east Mount Diablo base and meridian; an irrigation district duly organized under the name and style of "Tulare irrigation district," being situate in the county of Tulare, State of California.

And we further declare that,

A. P. Merritt	was	duly	elected	director	in	division	No. 1	of	said district.
W. B. Cartmill	"	"	"	"	"	"	No. 2	"	"
J. W. Mackie	"	"	"	"	"	"	No. 3	"	"
S. Richardson	"	"	"	"	"	"	No. 4	"	"
J. F. Gibson	"	"	"	"	"	"	No. 5	"	"
A. O. Erwin	"	"	"	assessor				"	"
Alfred Fay	"	"	"	collector				"	"
John A. Goble	"	"	"	treasurer				"	"

D. V. ROBINSON, *Chairman.*

Attest: JOHN G. KNOX, *Clerk*,
By T. W. HOLDER,
Deputy Clerk.

STATE OF CALIFORNIA, } ss:
County of Tulare, }

I, John G. Knox, clerk and *ex officio* clerk of board of supervisors in and for said Tulare county, do hereby certify the foregoing to be a full, true and correct copy of the order of said board declaring the formation of the "Tulare irrigation district" and the election of officers thereof, as the same appears from the original thereof now of record in my office.

Witness my hand and the seal of said board, this 14th day of September, 1889.

JOHN G. KNOX, *Clerk*,
By A. H. MURRAY, *Deputy.*

[Seal of Board of Supervisors.]

246 (Endorsed:) Recorded at the request of A. H. Murray, Jr., 15 min. past 3 p. m. September 14th, 1889, vol. 1, pg. 136, *et seq.*, of Miscellaneous Records of Tulare County. J. M. Johnston, recorder, F. G. Lindley, deputy recorder.

247 (EXHIBIT "B.")

Petition.

To the honorable the board of supervisors of the county of Tulare, State of California:

The undersigned, your petitioners herein, respectfully represent to your honorable body, that we are freeholders owning land within the following-described district, all of which is situated within Tulare county;

That we desire to provide for the irrigation of the same;

That all of said proposed district as hereinafter described, is susceptible of one mode of irrigation from a common source, and by the same system of works; that is to say, by conveying the waters of Kaweah river, by means of dams thereon, and by main and distributing canals therefrom.

We therefore petition your honorable body and pray that said hereinafter-described district be organized an irrigation district,

under an act of the legislature of the State of California, entitled "An act to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property, and for the distribution of water thereby, for irrigation purposes," approved March 7th, 1887.

The boundaries of said proposed district are as follows:

Commencing at the northeast corner of section 12, in township 19 south, range 24 east; thence south one mile to the northeast corner of section 13, township 19, south, range 24 east, from thence east two miles to the northeast corner of section 17, township 19 south, range 25 east; from thence south 3 miles to the southeast corner of section 29, township 19 south, range 25 east; from thence west one mile to the southwest corner of section 29, last aforesaid; from thence
248 south 4 miles to the northwest corner of section 20, township 20 south, range 25 east; from thence east one mile to the northeast corner of said section 20 last aforesaid; from thence south 3 miles to the southeast corner of section 32, township 20 south, range 25 east, from thence west to the northeast corner of section 5, township 21 south, range 25 east; from thence south 2 miles to the southeast corner of section 8, township 21 south, range 25 east; from thence west 10 miles to the southeast corner of section 11, township 21 south, range 23 east; from thence north 2 miles to the southwest corner of section 2, township 21, south, range 23 east; from thence east to the southwest corner of section 31, township 20 south, range 24 east; from thence north 1½ miles to the southeast corner of the northeast quarter of section 25, township 20 south, range 23 east; from thence west to the southwest corner of the northwest quarter of said section 25 last aforesaid; from thence south one-half mile to the southeast corner of section 26, township 20 south, range 23 east; from thence west one mile to the southwest corner of said section 26 last aforesaid; from thence north 2 miles to the northeast corner of section 23, township 20 south, range 23 east; from thence east 2½ miles to the southwest corner of the southeast quarter of section 18, township 20 south, range 24 east; from thence north one-half mile to the northwest corner of the southeast quarter of said section 18 last aforesaid; from thence east one mile to the southwest corner of the northeast quarter of section 17, township 20 south, range 24 east; from thence north three-quarters of a mile to the northwest corner of the southwest quarter of the southeast quarter of section 8, township 20 south, range 24 east; from thence east three-fourths of a mile to the northwest corner of the southeast quarter of the southwest quarter of section 9, township 20 south, range 24 east; from thence north one-fourth of a mile
249 to the northwest corner of the northeast quarter of the southwest quarter of said section 9 last aforesaid; from thence east one-fourth mile to the northwest corner of the southeast quarter of said section 9 last aforesaid; from thence north one-half mile to the northwest corner of the northeast quarter of said section 9 last aforesaid; from thence west 2½ miles to the southwest corner of section 6, township 20 south, range 24 east; from thence south one-half mile to the southeast corner of the northeast quarter of

section 12 township 20 south, range 23 east; from thence west one-half mile to the southwest corner of the northeast quarter of said section 12 last aforesaid; from thence south one-half mile to the southeast corner of the southwest quarter of said section 12 last aforesaid; from thence west one-half mile to the southwest corner of said section 12, last aforesaid; from thence south one-half mile to the southeast corner of the northeast quarter of section 14, township 20 south, range 23 east; from thence west one mile to the southwest corner of the northwest quarter of said section 14 last aforesaid; from thence south one-half mile to the southeast corner of section 15, township 20 south, range 23 east; from thence west one-half mile to the southwest corner of the southeast quarter of said section 15 last aforesaid; from thence north one mile to the northwest corner of the northeast quarter of said section 15 last aforesaid; from thence east one-half mile to the northeast corner of said section 15 last aforesaid; thence north one mile to the northwest corner of section 11, township 20 south, range 23 east; from thence east one mile to the northeast corner of said section 11 last aforesaid; from thence north one mile to the southwest corner of section 36, township 19 south, range 23 east; from thence west along the township line about 2½ miles to the west line of the swamp and overflowed land on Packwood creek; from thence
250 northeasterly along the meandering west line of said swamp and overflowed land to the northeast corner of the southeast quarter of section 13, township 19 south, range 23 east; from thence north to the northwest corner of section 18, township 19 south, range 24 east; from thence east 3 miles to the northwest corner of section 15, township 19 south, range 24 east; from thence north one mile to the northwest corner of section 10, township 19 south, range 24 east; from thence east 3 miles to the northwest corner of section 12, township 19 south, range 24 east; the place of beginning.

We respectfully request that said district be designated as the Tulare irrigation district."

	No. of acres.		No. of acres.
1. J. Goldman	900	J. W. Stufflebeem	180
2. J. C. Gist	80	J. B. Jumwalt	900
3. William Bruce	160	H. H. Francisco	40
4. C. H. Nelson	12½	F. Rosenthal	36
5. E. Lathrop	320	J. W. Dunlap	40
6. C. A. Hitchcock	80	Thos. H. Thompson	720
7. Geo. F. Trescott	100	S. S. Ingham	400
8. Jos. Kerkner	80	J. I. Batchelder	130
9. T. J. Gist	160	Frederick H. Wales	278
10. Z. H. Morris	40	Joseph Merritt	160
11. Alfred Fay	160	J. O. Lovejoy	50
12. George Hewitt	226	J. W. Mackie	160
13. B. Noussitou	260	James Stewart	180
14. W. A. Jacobs	494	W. I. Burnett	1091
15. W. H. Coggleshell	120	W. H. Alford	32
16. J. W. Chipwith	84	M. H. Patten	160
17. W. E. Cartmill	150	P. D. Fowler	90
18. J. B. Hamilton	159	R. N. Hough	243
19. Sam. Newell	320	C. Dunning	93
20. Robert Newell	100	Anson P. Hall	20

251	21. John W. Hooper	680	John M. Ginley	507
	22. E. J. Hodges	80	Luke F. Warren	480
23.	J. T. Chisholm	180	Amos Hicks	10
24.	W. F. Stewart	160	S. Fowler	200
25.	E. A. Brady	40	M. M. Burnett	500
26.	I. A. Moorehead	240	S. A. Blythe	20
27.	Eva M. Moody	80	O. S. Woodruff	20
28.	John A. Goble	40	H. K. Ayer	32
29.	Sam. Richardson	250	S. Weaver	380
30.	B. M. Alford	40	A. W. Stewart	80
31.	A. T. Cotton	320	O. B. Taylor	32
32.	R. H. Parrish	160	B. G. Parker	
33.	W. E. Brown	160	J. H. Aten	80
34.	E. T. Cosper	160	C. G. Hough	240
35.	W. H. Hillhoren	160	D. O. Hammon	180
36.	C. S. Jordon	320	J. W. Davis	30
37.	John C. Hawkins	80	E. Oakford	180
38.	H. E. Dye	160	John G. Eckels	3
39.	Theo. Harris	80	A. W. De Witt	20
40.	E. W. Dutcher	40	A. A. Hall	40
41.	J. F. Boller		J. H. Stufflebeem	480
42.	B. F. Moore	300	R. T. McMillan	32
43.	William Swall	160	G. W. Connor	5
44.	Jesse Richardson	60	R. S. Hill	145
45.	Amos Roberts	779	E. M. De Witt	640
46.	E. Nolfskill	789	J. M. Hart	30
47.	R. B. Snell	100	Clulli Averill	60
48.	H. S. Haseltine	140	F. M. Schultz	5
49.	Mary L. Smith	342	G. W. Kirkes	80
50.	J. E. Carter	80	C. H. Randell	160
51.	William Carpenter	225	William Dobson	7
52.	A. T. Fowler		Thomas Dobson	22
	53. Sol Ephraim	720	T. W. Maples	
252	54. L. E. Schoenemann		Frank P. Taylor	
	55. A. J. Pillsbury		H. A. Charters	
56.	Chas. M. Hatch		Miles Ellsworth	
57.	H. Frank Tandy	10	G. Q. Gill	
58.	S. D. Ayers	170	L. H. Stokes	7
59.	S. Bowles		J. A. Allen	
60.	I. H. Ham		E. W. Holland	
61.	L. Schoenfeld		R. K. Ham	
62.	R. Linder		R. S. Black	
63.	J. M. Alexander	170	S. T. Alexander	1890
64.	D. W. Madden		R. Chandler	135¼
65.	E. T. Buckman		T. Bacigalupi	320
66.	S. Witkowski			

253 "EXHIBIT C."

Notice.

"Pursuant to the statutes in such cases made and provided, notice is hereby given that the above and foregoing petition will be presented to the board of supervisors in and for the county of Tulare, at their first regular meeting, in the month of July, 1889, to wit: on Monday, the 1st day of July, 1889, at which time any person or persons desiring so to do, may present their objections, if any they have, why said petition should not be granted."

"EXHIBIT D."

In the matter of the petition of J. Goldman and others for the formation of an irrigation district.

At a regular meeting of the board of supervisors of the county of Tulare, held at their usual place of meeting in the courthouse at Visalia, on Monday, the first day of July, 1889, J. Goldman, J. C. Gist, William Bruce, and more than fifty other persons duly presented to this board a petition in writing, signed by them respectively, praying that the land embraced in the proposed district, the boundaries of which were set forth and particularly described in said petition, be organized into an irrigation district under the provisions of an act of the legislature of the State of California, entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March 7th, 1887.

Said petition was accompanied with a good and sufficient bond on behalf of petitioners, in double the amount of the probable costs of organizing said district, conditioned that the said bondsmen
254 will pay all said costs, in case said organization shall be effected, which said bond was duly approved by said board of supervisors and received with said petition and filed with the clerk of said board, and thereupon the further hearing and consideration of said petition and the matter of the organization of said therein-proposed district was by said board duly continued and set for hearing on the 6th day of July, 1889, at ten o'clock a. m., at which time the board duly convened and proceeded to the further hearing of the matter of said petition, and it appearing that several persons owning lands within the boundaries of said proposed district, as set forth in said petition, were present before the board, and had filed with the clerk of said board, their several applications in writing, asking that the lands severally owned by them, be excluded from said irrigation district as finally fixed by said board, upon the ground that such land will not be benefited by irrigation by said system proposed in said petition, the board proceeded to hear the testimony and proofs offered in evidence by and on behalf of said petitioners, and by and in behalf of said applicants, to have their lands excluded from said district, and the board having adjourned said hearing from time to time, and said testimony and proofs having been fully received, and the matter of the formation of said proposed district, and the proper boundaries having been fully argued to said board by attorneys representing the different parties having an interest in said matters, and the board having fully considered the testimony and proofs and arguments of said attorneys, now, on this 11th day of July, 1889, finds the facts to be as follows, to wit:

That said petition for the formation of said proposed irri-

gation district was duly signed by more than fifty freeholders owning lands susceptible to one mode of irrigation, from a common source, by the same system of works, which lands
255 are embraced within the boundaries of said proposed district, as hereinafter modified, fixed and established by said board, and that said petitioners desire to provide for the irrigation of said lands. That after said petition was signed by said petitioners and before the same was presented to this board, as hereinafter stated, said petition together with a notice stating that said petition would be presented to this board, on Monday, the 1st day of July, 1889, was duly published for three consecutive weeks next before said 1st day of July, 1889, in the "Weekly Tulare Register," a weekly newspaper printed and published in said Tulare county, that on Monday, the 1st day of July, 1889, being the first day of the regular July meeting of this board, and this board being then convened in regular session, said petition was duly presented to this board, and at the same time and accompanying said petition, said petitioners presented to this board, a good and sufficient bond in double the amount of the probable costs of organizing said district, and conditioned that the bondsmen, the obligors in said bond named, will pay all costs in case said organization shall not be effected, which said bond was duly approved by this board and filed with the clerk thereof.

That in order to comply with the requirements of said act of the legislature hereinbefore cited, it is necessary to make changes in the boundaries of said district proposed by said petitioners, and to exclude and except from the operations of said act of the legislature hereinbefore cited, and from said proposed district certain lands within the exterior boundaries of said proposed district, as the same are hereinafter and hereby established and defined, for the reason that in the opinion of this board, said lands so excluded are lands which will not be benefited by irrigation by the same system of works applicable to the other lands in such proposed district,
256 which lands so excepted are hereinafter specifically designated and described.

That all the lands embraced within the boundaries of said proposed district, as the same are hereinafter established and defined, other than the lands excepted from the said proposed district and hereinafter specifically designated, are susceptible of one mode of irrigation from a common source and by the same system of works.

Wherefore, it is ordered and adjudged, by said board of supervisors that the boundaries of said proposed irrigation district be and they are hereby established and defined as follows, to wit:

Commencing at the quarter-section corner on the east side of section 20 in township 19 south of range 25 east, Mt. Diablo base and meridian; running thence west one-half mile; thence north one-quarter mile; thence west one-half mile; thence north one-quarter mile; thence west one-half mile; thence north one-half mile; thence west one-half mile; thence south one-half mile; thence west one-half mile; thence south one-quarter mile; thence west one-half mile; thence south three-quarters mile; thence west

one-half mile; thence south one mile; thence west 250 rods more or less to the east side of the Southern Pacific Railway right of way; thence a little west of north on said railway line one-half mile more or less to the center section line running east and west through section 27 in township 19 south, range 24 east, thence east one-half mile more or less, to quarter-section corner on the east side of section 27, thence north one-half mile; thence west one-quarter mile; thence north one mile; thence west one-quarter mile; thence south one-half mile; thence west one-half mile; thence north one-half mile more or less, to the east side of the Southern Pacific right of way; thence northerly along the said east line of the said right of way one mile more or less to the north line of section 16, township 19 south, range 24 east; thence west 2½ miles more or less, to the northwest corner of section 18,
257 township 19 south, range 24 east; thence south one-half mile more or less to the northerly line of the United States survey of the swamp and overflowed land along the line of the Packwood creek; thence southwesterly following the meanders of said line of the swamp and overflowed land five miles more or less to the township line between townships 19 and 20 south, at a point at or near the quarter-section corner on the south side of section 33, township 19 south, range 23 east; thence east on said township line three-quarters mile more or less to the southwest corner of the southeast quarter of the southwest quarter of section 34, township 19 south, range 23 east, thence north one-quarter mile; thence east one-quarter, thence north three-quarters mile; thence east one and one-half miles; thence north one mile; thence east one-half mile; thence south one mile; thence east one and one-half miles; thence south one mile; thence west one mile; thence south one mile; thence west two miles; thence south one and one-half miles; thence — one-half mile; thence north one-half mile; thence east one mile; thence north one-half mile; thence east one-half mile; thence north one-half mile; thence east one mile; thence north three-quarter- miles; thence east one-half mile; thence south one-quarter mile; thence east one-half mile; thence south one-quarter mile; thence west one-half mile; thence south one-quarter mile; thence east one mile to the quarter-section corner on the south side of section 4, township twenty south, range 24 east; thence south one-half mile; thence west one-quarter mile; thence south one-quarter mile; thence west three-quarters mile; thence south three-quarters mile; thence west one mile; thence south one-half mile; thence west 2½ miles; thence south 2 miles; thence east one mile; thence north one-half mile; thence east one mile; thence south one-half mile; thence east one-half mile; thence north one-half mile; thence east one-half mile; thence south one and one-quarter
258 miles; thence east one-half mile; thence south 2¼ miles; thence east one mile more or less to the channel of Elk bayou; thence following the meanderings of said bayou in a northeasterly direction about three miles more or less to the one-half section line running north and south through section 2 township 21 south range 24 east; thence north on said one-half section line one-half mile

more or less to the northwest corner of the south one-half of the northeast quarter of said section two; thence east one-half mile; thence north three-quarters mile; thence west one-half mile; thence north one and one-quarter miles; thence west one-quarter mile; thence north about 60 rods to the line of the swamp and overflowed land on the northeast quarter of section 27, township 20 south range 24 east; thence along the meanderings of said line of the swamp and overflowed land in a northeasterly direction about 80 rods more or less to where said line crosses section line between sections 22 and 27 in township 20 south, range 24 east; thence east on said section line, 10 rods more or less, to the southeast — of said section 22; thence north one-quarter mile; thence east one-half mile more or less to the Southern Pacific railway; thence northerly along said railway 20 rods more or less to the north line of the swamp and overflowed land on section 2, township 20 south, range 24 east; thence northeasterly about 3 miles more or less, following the meanderings of said northerly line of said swamp and overflowed land, to the east line of section 18, at or near the quarter-section corner on the east side of said section 18 in township 20 south, range 25 east; thence north one-half mile more or less to the northeast corner of said section 18; thence west one-quarter mile; thence north three-quarters mile; thence west one-half mile; thence north three-quarters mile; then east one-quarter mile; thence north one-half mile; thence east one-half mile; thence north one-half mile; thence west one-half
259 mile; thence south one-half mile; thence west one mile; thence south one-half mile; thence west one-half mile; thence north one-half mile; thence east one-half mile; thence north one-half mile to the center of section 36, township 19 south, range 24 east; thence west one-half mile; thence north one-half mile; thence east one-half mile; thence north one-half mile; thence east one mile; thence south one-half mile; thence east one-quarter mile; thence north one-half mile; thence east one-quarter mile; thence north one-half mile; — east one-quarter mile; thence north one-half mile; thence *thence* east one mile more or less to the line of the swamp and overflowed land on the northeast quarter of section 29, township 19 south, range 25 east; thence southwesterly following the meanderings of said line of said swamp and overflowed land about three-quarters of one mile more or less, to the east line of the west half of the northwest quarter of section 29, in township 19 south, range 25 east; thence south on said line 30 rods more or less to the southeast corner of said west one-half of the northwest quarter of said section 29; thence west 30 rods more or less to the line of the swamp and overflowed land, thence southwesterly following the meanderings of said line of swamp and overflowed land about 40 rods to west line of said section 29 thence south on said section line, about 140 rods more or less to the southwest corner of said section 29; thence north 40 rods; thence east 40 rods; thence north one mile to the place of beginning.

That the following is a particular description of the lands situate within the exterior boundaries of said proposed district hereinbefore

referred to, which are excepted from the operation of said act of the legislature hereinbefore cited, and excepted and taken out of said proposed district, to wit:

S. E. ¼ of S. E. ¼ of sec. 24, N. ½ of N. ½ and S. E. ¼ of N. W. ¼ sec. 25, T. 19 S. R. 25 E. S. 142 A. of S. W. ¼ of sec. 3, E. ½ and N. E. ¼ and N. ½ of S. E. ¼ of sec. 15, W. ½ of N. W. ¼ of sec. 23, N. E. ¼ of N. W. ¼ and N. ½ of N. E. ¼ and frl 44 A. of S. E. ¼ of sec. 28, T. 20 S. R. 24 E.

And it is hereby ordered that the said proposed district be and the same is hereby divided into five divisions, as nearly equal in size as practicable, and numbered respectively, 1st, 2nd, 3rd, 4th, and 5th, as follows, to wit:

(Here follows description of the separate boundaries of each division of said district.)

And it is further ordered that at an election held in said district at the various polling places hereinafter specified and ordered within the boundaries of said district between the hours specified by law, on Saturday, the 24th day of August, 1889, for the purpose of determining whether said proposed district shall be organized under the provisions of said act of the legislature hereinbefore recited, and referred to, said irrigation district shall be known and designated as the "Tulare irrigation district."

And it is further ordered that notice of such election signed by the chairman and clerk of this board, and attested by the official seal of this board be given, which notice shall describe the boundaries of said proposed district established by this board and shall designate the name of said proposed district, to wit: the "Tulare irrigation district," and shall require the electors of said district, to cast ballots which shall contain the words, "Irrigation district—Yes," or "Irrigation district—No," or words equivalent thereto, and shall contain the names of persons to be voted for, to fill the following offices of said proposed district, to wit: an assessor, a collector, a treasurer, and a board of five directors, one of said directors to be elected from each of said divisions of said proposed district, hereinbefore described and for the purpose of the election above provided for, election precincts are hereby ordered and established in said proposed district as follows, to wit:

(Here follows a description of the five election precincts in said proposed district, and also includes the names of the polling places and the names of the persons who are to act as election officers.)

D. V. ROBINSON, *Chairman.*

Attest: JOHN G. KNOX, *Clerk,*
By N. W. HOLDER,
Deputy Clerk.

"EXHIBIT E."

The board of supervisors of Tulare county, State of California, met as a board of canvassers on Monday, the 2nd day of September, 1889, for the purpose of determining the result of the special

election held in Tulare county, as follows: Held on the 24th day of August, to vote for and against the organization of the Tulare district and officers therefor.

Present: D. V. Robinson, chairman. T. G. Henderson, James Barton, W. J. Newport, supervisors.

Absent: Supervisors J. H. Woody,

And the returns of said election being filed with the county clerk and *ex officio* clerk of said board, they were this day opened and canvassed by said board of supervisors, from which it appears that there were cast for "Irrigation district, Yes" and for "Irrigation district, No," and for each of the persons hereinafter named, for the respective offices of such proposed irrigation district, the following votes, to wit:

In the Tulare Irrigation District

	Division No. 1.	Division No. 2.	Division No. 3.	Division No. 4.	Division No. 5.	Total.
Irrigation district Yes.....	27	27	13	403	7	484
" " No	.....	1	.....	6	.....	7
For director Div. No. 1 A. P. Merritt.	26	27	13	409	7	483
For director Div. No. 2 W. B. Cartmill....	27	27	13	409	7	484
For director Div. No. 3 J. W. Mackie.....	27	27	13	409	7	484
For director Div. No. 4 S. Richardson.....	27	27	13	409	7	484
For director Div. No. 5 J. F. Gibson.. .. .	27	27	13	409	7	484
263 For treasurer John A. Goble	26	27	13	409	7	483
For assessor A. O. Erwin....	27	26	13	409	7	483
For collector Alfred Fay.....	27	26	13	409	7	483

Now, therefore, we, the board of supervisors of Tulare county, State of California, do hereby declare that at the special election held in said Tulare county on Saturday the 24th day of August, 1889, for the purpose of voting for and against the formation of a proposed irrigation district, and for officers for such district, the number of votes are correct as set forth in the foregoing statement.

That the several candidates for the respective offices named and "Irrigation district" Yes, and "Irrigation district No," received the whole number of votes set opposite their respective names and places in said statement.

And we further declare the territories embraced in the following-described limits, to wit:

Commencing at the quarter-section corner on the east side of section 20 in township 19 south range 25 east Mount Diablo base and meridian; running thence west one-half mile; thence north ¼ mile; thence west ½ mile; thence north ¼ mile; thence west ½ mile; thence north ½ mile; thence west ½ mile; thence south

¼ mile; thence west ½ mile; thence south ¼ mile; thence west ½ mile; thence south ¾ mile; thence west ¼ mile; thence south 1 mile; thence west about 250 rods more or less to the east side of the Southern Pacific railway right of way; thence a little west of north on said railway line, ½ mile more or less to the center section line running east and west through section 27 in township 19 south, range 24 east; thence east ½ mile more or less to quarter-section corner on the east side of said section 27; thence north ½ mile
264 thence west ¼ mile; thence north 1 mile; thence west ¼ mile; thence south ½ mile; thence west ½ mile; thence north ½ mile; more or less to the east side of the Southern Pacific Railway right of way; thence northerly along the said east line of the said right of way 1 mile, more or less to the north line of section 16, township 19 south, range 24 east, thence west 2½ miles more or less to the northwest corner of section 18, township 19 south, range 24 east; thence south ½ mile more or less to the northerly line of the United States survey of the swamp and overflowed land along the line of the Packwood creek; thence southwesterly following the meanders of said line of the swamp and overflowed land, 5 miles more or less, to the township line between townships 19 and 20 south, at a point at or near the quarter-section corner on the south side of section 33, township 19 south, range 23 east, thence north ¼ mile, thence east ¼ mile; thence north ¾ miles; thence east ½ mile; thence north 1 mile; thence east ½ mile; thence south 1 mile; thence east 1½ miles; thence south 1 mile; thence west 1 mile; thence south 1 mile; thence west 2 miles; thence south 1½ miles; thence east ½ mile; thence north ½ mile; thence east 1 mile; thence north ½ mile; thence — ½ mile; thence north ½ mile; thence east 1 mile; thence north ¾ mile; thence east ½ mile; thence south ¼ mile; thence west ½ mile; thence south ¼ mile; thence east 1 mile to the quarter-section corner on the south side of section 4, township 20 south, range 24 east, thence south ½ mile; thence west ¼ mile; thence south ¼ mile; thence west ¾ mile; thence south ¾ mile; thence west 1 mile; thence south ½ mile; thence west 2½ miles; thence south 2 miles; thence east 1 mile; thence north ½ mile; thence east 1 mile; thence south ½ mile; thence east ½ mile; thence north ½ mile; thence east ½ mile; thence south 1¼ miles; thence east ½ mile; thence south 2½ miles; thence
265 east 1 mile, more or less, to the channel of Elk bayou; thence following the meanderings of said Elk bayou in a northeasterly direction about 3 miles more or less to the ½-section line running north and south through section 2, township 21 south, range 24 east; thence north on said ½-section line ½ mile more or less to the northwest corner of the south ½ of northeast ¼ of said section 2; thence east ½ mile; thence north ¾ mile; thence west ½ mile; thence north 1¼ miles; thence — ¼ mile; thence north about 60 rods to the line of the swamp and overflowed land on the northeast ¼ of section 27, township 20 south, range 24 east; thence along the meanderings of said line of the swamp and overflowed land, in a northeasterly direction, about 80 rods more or less to where said line crosses section line between sections 22 and 27 in township 20

south, range 24 east; thence east on said section line 10 rods more or less to the southeast corner of said section 22; thence north ¼ mile; thence east ½ mile more or less to the Southern Pacific railway; thence northerly along said railway 20 rods more or less to the north line of the swamp and overflowed land on section 23, township 20 south, range 24 east; thence northeasterly about 3 miles more or less, following the meanderings of said northerly line of said swamp and overflowed land to the east line of section 18, at or near the quarter-section corner on the east side of said section 18, in township 20 south, range 25 east; thence north ½ mile more or less to the northeast corner of said section 18, thence west ¼ mile; thence north ¾ mile; thence west ½ mile; thence north ¾ mile; thence east ¼ mile; thence north ½ mile; thence east ½ mile; thence north ½ mile; thence west ½ mile; thence south ½ mile; thence west 1 mile; thence south ½ mile; thence west ½ mile; thence south ½ mile; thence west ½ mile; thence north ½ mile; thence east ½ mile; thence north ½ mile; to the center of section 36, township 19 south, range 24 east;
266 thence west ½ mile; thence north ½ mile; thence east ½ mile; thence north ½ mile; thence east 1 mile; thence south ½ mile; thence east ¼ mile; thence north ½ mile; thence east ¼ mile; thence north ½ mile; thence east 1 mile more or less, to the line of the swamp and overflowed land on the northeast ¼ of section 29, township 19 south, range 25 east; thence southwesterly following the meanderings of said line of said swamp and overflowed land about ¾ of one mile more or less to the east line of the west ½ of northwest ¼ of section 29, in township 19 south, range 25 east; thence south on said line 30 rods more or less to the southeast corner of said west ½ of the northwest ¼ of said section 29; thence west 30 rods more or less to the line of the swamp and overflowed land; thence southwesterly following the meanderings of said line of swamp and overflowed land about 40 rods to west line of said section 29; thence south on said section line about 140 rods more or less to the southwest corner of said section 29; thence east one mile; thence north 120 rods; thence west 40 rods; thence north 40 rods; thence east 40 rods; thence north one mile to the place of beginning. Excepting therefrom S. E. ¼ of S. E. ¼ of sec. 24, N. ½ of N. ½ and S. E. ¼ of N. W. ¼ sec. 25, T. 19 S., R. 25 E., S. 140 acres of S. W. ¼ of sec. 3, E. ½ and N. E. ¼ and N. ½ of S. E. ¼ of sec. 15, W. ½ of N. W. ¼ of sec. 23, N. E. ¼ of N. W. ¼ and N. ½ of N. E. ¼ and fractional 44 A. of S. E. ¼ of sec. 28, T. 20 S., R. 24 E. An irrigation district duly organized under the name and style of, "Tulare irrigation district," being situate in the county of Tulare, State of California.

And we further declare that,

A. P. Merritt was duly elected director in division No. 1 of said district.

W. B. Cartmill was duly elected director in division No. 2 of said district.

J. W. Mackie was duly elected director in division No. 3 of said district.

267 S. Richardson was duly elected director in division No. 4 of said district.

J. F. Gibson was duly elected director in division No. 5 of said district.

A. O. Erwin was duly elected assessor of said district.

Alfred Fay was duly elected collector of said district.

John A. Goble was duly elected treasurer of said district.

D. V. ROBINSON, *Chairman.*

Attest: JOHN G. KNOX, *Clerk,*
By T. W. HOLDER,
Deputy Clerk."

Thereupon the plaintiff offered in evidence all the facts stated in the first twelve paragraphs of the foregoing stipulation, filed March 29th, 1900, and the defendant and intervenors objected to such offer, and to the admission of said facts, or any of them, upon the following grounds:

That the testimony offered is irrelevant, incompetent and immaterial, and that the statute of the State of California, under the provisions of which the bonds in suit are claimed to have been issued, is void, invalid, and unconstitutional, as being an attempt to take property and impose obligations without due process of law, and that said statute deprives defendant and the land-owners of such district of the equal protection of the law.

That said statute does not provide for any hearing of, or any day in court on the question of the formation of said irrigation district, and that the notice called for by said statute of the hearing on the petition for the formation of such district, was not, nor was any other notice given; and that the notice claimed to have been

268 given was no notice whatever, and as such was null and void, within the decision of the supreme court of the State of California, in the case of *In re* Central Irrigation District, reported in the 117 Cal. Reports, at page 382, and such notice was not published, and does not purport to be published by authority of law, or by any one authorized to give such notice.

That defendant is not estopped to deny that said district was not duly organized, or that the law was not complied with, in regard to the formation thereof, and that it never had any legal existence.

That the recitals in said bonds cannot cure any defects in the proceedings leading to the issue thereof, and that said bonds are invalid, even in the hands of holders for value, and that the holders of said bonds cannot rely on said recitals, but are bound by and affected with notice of any and all defects and irregularities shown by the records and proceedings of said district, and are affected with constructive notice thereof; and that said records and proceedings show that said bonds are invalid in the following particulars and for the following reasons, viz:

1. That no notice was given by the board of supervisors of the county of Tulare, of the election called by them, for the formation of said Tulare irrigation district.

2. That said board of supervisors did not declare the territory

voted for an irrigation district and did not cause a copy of any order of said board declaring said district organized as an irrigation district, duly certified or otherwise, to be filed for record in the office of the county recorder of said Tulare county.

3. That the board of directors of said Tulare irrigation district, prior to the issuance of the bonds in suit, did not estimate or
269 determine the amount of money necessary to be raised for the construction, use, supply, maintenance, repairs and improvements, of the canals or works, or requiring the necessary property or rights therefor.

4. That in the petition for the confirmation for the issuance and sale of the bonds in suit, the lands claimed to be in said proposed district and affected by said bonded indebtedness, *was* not described nor in any manner referred to, so that a land-owner in said district could ascertain therefrom that the lands owned by him were affected thereby.

5. That by the order of the board of supervisors, attempting to establish and define the boundaries of said Tulare irrigation district, said board so established and defined such boundaries that said district comprises, embraces and is composed of four separate and distinct bodies of land not contiguous to each other, and which taken together did not and do not form one body of land, and is not such a body of land as is intended by said act of the legislature to be formed into an irrigation district.

6. That none of said bonds in suit bear date of the day of their issuance, nor do said bonds conform in any respect to the said act of the legislature; that all of said bonds are dated July 1st, 1890, whereas none of the bonds in this action were issued earlier than May 1891, and a greater portion thereof were issued between March, 1892, and February 1893, and that each and all of said bonds are made payable twenty years from said July 1st, 1890, and not twenty years from *said July 1st, 1890, and not twenty years from* the dates of their respective issuance.

That by the law of California, the officers of said district had no power to make any recitals in said bonds curing said defects, and that such recitals do not cure the same.

That the confirmation proceedings were void and without due or any process of law, and that no proper or any notice thereof, was given; and that until said district was duly organized, no
270 such proceedings could be had, and that the statute providing for such confirmation proceeding, is unconstitutional as not affording equal protection of the law, or due process of law, as provided by the 14th amendment to the Constitution of the United States, and is also void as special legislation under the constitution of California, and that the notice prescribed by said statute was not given, and said statute does not provide for due process of law.

And further, to the offer of the facts stated in the second paragraph of said stipulation, the defendant and intervenors objected on all the grounds last above set forth, and on the further ground that the evidence did not tend to prove the *de jure* existence of the Tulare

irrigation district, and that evidence of its *de facto* character was incompetent, irrelevant and immaterial.

Thereupon the court overruled said objections and admitted said facts in evidence, to which ruling the said defendant and said intervenors each and severally, and respectively, then and there duly excepted. (Exception No. 1.)

And thereupon, counsel for the plaintiff offered in evidence a certified copy of the judgment-roll in the matter of the Tulare Irrigation District, certified from the county clerk's office of the county of Tulare, State of California, the proceedings being what is termed confirmation proceedings, the judgment having been entered prior to the sale of any of these bonds, and the document offered being certified by the clerk of the court, on the 18th day of January, 1898, under the seal of the clerk's office of the court, the case being numbered 2329, and said judgment-roll was and is in the words and figures following, to wit:

271 In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District. No. —.

To the superior court of the county of Tulare, State of California:

The petitioner, The Board of Directors of Tulare Irrigation District, respectfully represents:

That said irrigation district was, on or about the 2nd day of September, 1889, duly organized as an irrigation district by the board of supervisors of said county, under and in pursuance of an act entitled, "An act to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March 7th, 1887; that ever since its organization it has claimed in good faith to be and has existed as an irrigation district.

That the first board of directors of said irrigation district was duly elected under and in pursuance of the provisions of said act.

That thereafter, at an election held in said district on the 2nd day of April, 1890, J. W. Mackie, A. P. Merritt, W. B. Cartmill, E. De Witt, and J. F. Gibson, were duly elected as members of the board of directors of said district, and thereupon duly qualified as such, and ever since their said qualification as such, they have constituted and still constitute the board of directors of said irrigation district.

272 That all the land of said district and embraced within its boundaries are situated within said county of Tulare, and that the office of the board of directors of said district is required to be kept, and in fact is kept at the city of Tulare in said county.

That the board of directors of said district, as soon as practicable after the organization of said district, to wit: on or about the 12th day of May 1890, at a regular meeting thereof, estimated and determined the amount of money necessary to be raised by said

district, for the purpose of constructing the canals and works which were necessary for the irrigation of the land of said irrigation district, for the purpose of acquiring for said district the property, water and water rights, which would be necessary therefor; that said board of directors then and there estimated that the sum of five hundred thousand dollars was necessary to be raised for the purpose aforesaid, and that the said board determined that it was necessary and proper that bonds of said district to the amount of five hundred thousand dollars ($500,000) in all respect- conforming to the provisions of said act, be issued by said district and that the same be sold in order to raise the amount of money necessary for said purposes, provided the qualified electors of said district should vote in favor of the issue of such bonds.

That thereupon said board immediately called a special election to be held in said district by the electors of said district who possessed the qualifications prescribed by said act, at which election there should be submitted to them the question whether or not such bonds of said district should be issued in the amount so determined by said board, and then and there ordered said special election to be held on Saturday, the 7th day of June, 1890; and then and there ordered that notice of said election be given by posting notices thereof in each election precinct in said district for at least twenty days before the time fixed as aforesaid for said election, and also by the publica-
273 tion of said notice once a week for at least three weeks before the time so fixed as aforesaid for said election, in the Weekly Tulare Register, a newspaper which was then published at the city of Tulare, in said county; that the notices of said election were duly posted and published in conformity with the said order and the provisions of said act, and were caused to be so posted and published by the order of said board. That at the time fixed as aforesaid for said special election, such election was in fact held in said district by the qualified electors thereof, upon the said question whether or not bonds of said district should be issued in the amount aforesaid; that said election was held and conducted in all respects in conformity with the provisions of said act; that the returns from said election from all the election precincts in said district were duly filed in the office of said board of directors; that thereafter, to wit: on the 9th day of June, 1890, the said board of directors duly canvassed the said returns and ascertained therefrom the result of said election, and then and there ascertained, found and declared as and for the result of said election; that three hundred and ninety-eight (398) legal votes were cast at said special election; that three hundred and forty-eight (348) legal votes were cast at said special election for and in favor of such issue of said bonds of said district; that fifty (50) legal votes were cast at said special election against such issue of said bonds; that a majority of the legal votes cast at said election were in favor of the issue of said bond-; and that said board caused the result of said election to be entered upon the minutes of said board. That thereafter at a regular meeting of said board of directors, to wit: on or about the 1st day of July, 1890, said board of directors

ordered that the bonds of said irrigation district in the said amount of five hundred thousand dollars, be issued in the manner and form prescribed by law; and said board of directors then and there
274 further ordered that all of said bonds should be of the denomination of five hundred dollars each and that there should be attached to each of said bonds coupons for the installments of the principal of said bonds, and for the semi-annual interest on said bonds; that said bonds should be substantially in the form, and be signed, sealed and numbered as is provided in said act; that they should bear interest at the rate of six per cent. per annum, payable semi-annually on the first days of January and July of each year; that the coupons for the interest and the coupons for the installments of the principal, should each be signed by the secretary of said board; that both the principal and interest of said bonds should be payable in the gold coin of the United States and at the office of the treasurer of said district; that said bonds should contain the recitals mentioned in said act, and also the recitals in the result of the election aforesaid, in favor of the issue of such bonds; that said bonds be made payable to the bearer thereof; that the said bonds should be dated as of the same date, and that said bonds and coupons should state the dates of their respective maturities, and should be substantially in the following forms respectively:

No. —. $500.

UNITED STATES OF AMERICA, *Tulare Irrigation District, Tulare County, State of California.*

Tulare Irrigation District, a public corporation, organized and existing under and in pursuance of the laws of the State of California, for value received, promise- to pay to the bearer hereof, at the office of the treasurer of said district, the sum of five hundred dollars, in gold coin of the United States, in installments as follows, to wit: At the expiration of eleven years, five per cent. of said sum; at the expiration of twelve years, six per cent. of said sum; at the
275 expiration of thirteen years, seven per cent. of said sum; at the expiration of fourteen years, eight per cent. of said sum; at the expiration of fifteen years, nine per cent. of said sum; at the expiration of sixteen years, ten per cent. of said sum; at the expiration of seventeen years, eleven per cent. of said sum; at the expiration of eighteen years, thirteen per cent. of said sum; at the expiration of nineteen years, fifteen per cent. of said sum, and at the expiration of the twentieth year, sixteen per cent. of said sum; said installments to be paid as provided in and only upon presentation and surrender of the installment coupons hereunto attached. Said — further promises to pay interest on said sum at the rate of six per cent. per annum, payable semi-annually, on the first day of January and July of each year, in gold coin of the United States, on presentation and surrender at the office of the treasurer of said district, of the respective interest coupons hereunto attached.

This bond is one of a series of bonds amounting in the aggregate

to five hundred thousand dollars, caused to be issued by the board of directors of said Tulare irrigation district, by authority of and pursuant to the provisions of an act of the legislature of the State of California, entitled, "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March 7th, 1887; and also by authority of and in accordance with the vote of the qualified electors of said irrigation district at a special election duly held on the 7th day of June, 1890.

The principal and interest of said bonds are to be paid out of the proceeds of annual assessments, to be levied upon the lands of the district, amounting — acres, of the present assessed value of $——.

276 In witness whereof, this bond has been signed by the president and secretary of the board of directors of said Tulare irrigation district, and the seal of said board has been affixed hereto, this — day of —— in the year one thousand eight hundred and ninety.

——— ———,
President of said Board.

[SEAL.]

——— ———,
Secretary of said Board.

$—. Installment coupon No. —.

Tulare Irrigation District will pay to bearer, at the office of the treasurer of said district, at Tulare, Tulare county, State of California, U. S. A., on —— 1, 190–, the sum of — dollars, in gold coin of the United States, being — installment of — per cent. of principal of bond No. — dated —— —, 1890. Interest on said installment will cease after maturity.

——— ———, *Secretary.*

$—. Interest coupon No. —.

Tulare Irrigation District will pay to bearer at the office of the treasurer of said district, at Tulare, Tulare county, State of California, U. S. A., on —— 1, 18—, the sum of — dollars, in gold coin of the United States, being semi-annual interest on bond No. — dated —— —, 1890.

——— ———, *Secretary.*

277 That immediately thereafter, to wit: on the 1st day of July, 1890, said board of directors ordered that one thousand bonds of said district, with the coupons thereto attached, conforming to the provisions of said act, and to the foregoing order, be prepared, executed and issued in such manner and form, in all respects that they should become and be ready for sale by said board of directors for and in behalf of said district.

That thereafter, to wit: on the 6th day of August, 1890, said board of directors, at a regular meeting thereof, by a resolution duly

adopted by and entered in the minutes of said board, declared its intention to sell said bonds to the amount of two hundred thousand dollars, on the 17th day of November, 1890, and ordered that a notice that sealed proposals would be received by said board at its office in the city of Tulare, up to the hour of one p. m. of the 17th day of November, 1890, for the purchase of said bonds last aforesaid, be published for twenty days before said day, in the following-named daily newspapers: The San Francisco Journal of Commerce, published in the city and county of San Francisco; the Sacramento Bee, published in the city of Sacramento, and the Los Angeles Express, published in the city of Los Angeles.

That none of said bonds have been sold, but all of the same remain unsold.

Wherefore, your petitioner prays that the proceedings aforesaid, for the issue and sale of said bonds of said irrigation district, may be judicially examined, approved and confirmed by this court.

J. W. DAVIS,
Attorney for Petitioner.

A. L. RHODES, *Of Counsel.*

278 (Endorsed:) No. 2329. Superior court, Tulare county. In the matter of Tulare Irrigation District. Petition for confirmation. Filed Aug. 11, 1890. John G. Knox, clerk. By ——, deputy J. W. Davis, attorney for petitioner.

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District. No. —.

Upon reading and filing the petition of the Board of Directors of Tulare Irrigation District, praying that the proceedings for the issue and sale of the bonds of said district may be judicially examined, approved and confirmed by this court, it is ordered by the court that said petition be set down for hearing by the court on the 15th day of September, 1890, at the opening of the court on that day, at the court-house, in the city of Visalia in the county aforesaid, and that the clerk of this court cause a notice of the filing of said petition, to be given and published in the manner and for the time prescribed by law; that he post said notice in three public places in each election precinct in said irrigation district, for at least twenty days before said day, and that he cause said notice to be published in the Weekly Tulare Register, a newspaper in the city of
279 Tulare in said county, once a week for three successive weeks before said day; that said notice shall state the time and place as aforesaid, for the hearing of said petition and shall state the prayer of said petition, and that any person interested in the organization of said irrigation district or in the proceedings for the issue or sale of said bonds, may, on or before the day aforesaid, demur to or answer said petition.

WM. W. CROSS, *Judge.*

Aug. 11, 1890.

(Endorsed:) No. 2329 Superior court, Tulare county. In the matter of Tulare Irrigation District. Order setting petition for hearing, and directing to be given. Filed Aug. 11, 1890. John Cutler, Jr., clerk By —— —— deputy. Recorded Aug. 13, 1890.

Affidavit of Publication.

STATE OF CALIFORNIA, } ss:
County of Tulare, }

Miles Ellsworth being duly sworn, upon his oath, deposes and says:

My name is Miles Ellsworth. I am a resident of the county of Tulare, State of California, and am over the age of twenty one years. I am now and ever since the 1st day of August, 1890, have been, one of the editors, printers and publishers of the Weekly Tulare Register, a newspaper printed and published in Tulare, in said Tulare county, and as such had charge of all the advertisements pub-
280 lished in said newspaper since said 1st day of August, 1890, and I further state that the notice of hearing petition of which the copy annexed on the margin hereof is a true printed copy, which printed copy is hereby referred to and made part hereof, was published in said newspaper once each week for five successive weeks, the said notice being in each number of the regular and entire issue, and not in any supplement thereof, and during each and all the times specified as follows, to wit: In the issue of August 15th, 1890; in the issue of August 22nd, 1890; in the issue of August 29th, 1890; in the issue of September 5th, 1890; in the issue of September 12, 1890.

MILES ELLSWORTH.

Subscribed and sworn to before me this 13th day of September, 1890.

J. W. DAVIS,
[SEAL.] *Notary Public, Tulare Co., Cal.*

(For printed notice referred — in above affidavit, see next page.) (Clerk.)

Notice of Hearing of Petition.

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

Notice is hereby given that the petition of the Board of Directors of Tulare Irrigation District, praying that the proceeding for the issue and sale of the bonds of said district may be judicially examined, approved and confirmed by said court, was on the 11th day of August, 1890, filed in said court; that said court fixed as the time for the hearing of said petition, the 15th day of September, 1890, at the opening of the court on that day, at the court-house in the city

of Visalia, county of Tulare; and notice is further given
281 that any person interested in the organization of said district, or in the proceedings for the issue or sale of said bonds may on or before the day last above mentioned demur to or answer said petition.

By order of the court.

Attest:

[SEAL.] JOHN G. KNOX, *Clerk.*

(The foregoing is the copy of the printed notice referred — in the affidavit.) (Clerk.)

(Endorsed:) No. 2329. Superior court, county of Tulare. In the matter of Tulare Irrigation District. Proof of publication of notice of hearing petition for confirmation. Filed Sept. 15, 1890. John G. Knox, clerk. J. W. Davis, attorney for petitioner.

282 *Notice of Hearing of Petition.*

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

Notice is hereby given, that the petition of the Board of Directors of Tulare Irrigation District, praying that the proceeding for the issue and sale of thr bonds of said district may be judicially examined, approved and confirmed by said court, was on the 11th day of August, 1890, filed in said court; that said court fixed as the time for the hearing of said petition, the 15th day of September, 1890, at the opening of the court on that day, at the court-house in the city of Visalia, county of Tulare; and notice is further given, that any person interested in the organization of said district, or in the proceedings for the issue or sale of said bonds, may, on or before the day last above mentioned, demur to or answer said petition.

By order of the court.

Attest:

[SEAL.] JOHN G. KNOX, *Clerk.*

(The foregoing is a copy of the notice referred — in the following annexed affidavit.) (Clerk.)

283 STATE OF CALIFORNIA, } ss:
County of Tulare, }

Edward Oakford, being duly sworn, says:

I am and at all times hereinafter mentioned was, secretary of the board of directors of Tulare irrigation district; on the 19th day of August, 1890, I posted notices of hearing of petition of which the annexed is a true copy in three public places in each election precinct in said district, to wit:

In precinct No. 1.—On fence along public road on southwest quarter of section 36, township 19 south, range 24 east of Mount Diablo meridian: on fence along public road on southwest quarter

of section 6, township 20 south, range 25 east of Mount Diablo meridian; and on fence along public road at northeast corner of the northeast quarter of section 13, township 20 south, range 24 east of Mount Diablo meridian.

In precinct No. 2.—On gate post at east side of public road on west side of southwest quarter of section 22, township 19 south, range 24 east of Mount Diablo meridian; on fence along public road, at northeast corner of northwest quarter of said section 32, said township and range, and on stake near the intersection of public roads on the southeast corner of lot number 20, in Russell colony.

In precinct No. 3.—On an oak tree at south side of public road on northeast quarter of section 11, township 20 south, range 23 east of Mount Diablo meridian; on fence at south side of public road on section 24, said township and range, and on fence along public road at southeast corner of the southeast quarter of section 16, township 20 south, range 24 east of Mount Diablo meridian.

Precinct No. 4.—On bulletin-board at the post-office; on awning post in front of Grand hotel, on Front street; and on bulletin-
284 board in front of city clerk's office on Kern street, all in the city of Tulare.

In precinct No. 5.—On fence along public road on north side of northwest quarter of section 30, township 20 south, range 24 east of Mount Diablo meridian; on fence along public road on east side of east half of section 32, said township and range; and on fence post on east side of public road on section 27 said township and range.

In addition to the above, I posted one of the said notices in the office of the board of trustees of said district, in the city of Tulare.

EDWARD OAKFORD.

Subscribed and sworn to before me this 8th day of September, 1890.

J. W. DAVIS,
Notary Public, Tulare County, Cal.

[SEAL.]

(For printed notice referred to in above affidavit see next page.) (Clerk.)

(Endorsed:) No. 2329. Superior court, county of Tulare. In the matter of Tulare Irrigation District. Proof of posting notice of hearing. Petition for confirmation. Filed Sept. 15, 1890. John G. Knox, clerk.

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

This cause having been regularly brought on to hearing before said court on the 15th day of September, 1890, the said board of directors appearing by J. W. Davis, its attorney, and A. L.
285 Rhodes, as counsel, no person having demurred to or answered said petition herein filed, or appeared in opposition thereto;

And the evidence being heard and the cause being submitted to the court for its decision, the court now finds the following facts and conclusions of law in the cause.

1st. That on the 11th day of August, 1890, the said court ordered the petition herein to be set down for hearing on the 15th day of September, 1890, at the opening of court on that day, at the court-room of said county, at the city of Visalia, in said county, and that the clerk of this court cause a notice of the filing of said petition, to be given and published in the manner prescribed by law, to wit: by the publication of said notice once a week for three successive weeks before the said 15th day of September, 1890, in the Weekly Tulare Register, a newspaper published in the city of Tulare in said county, and also by posting such notices for at least twenty days before the said 15th day of Septomber, 1890, in three public places in each of the election precincts of said district, and that said notice should state the time and place as aforesaid, for the hearing of said petition and the prayer of said petition-, and that any person interested in the organization of said district, or in the proceedings for the issue or sale of said bonds, may, on or before the day aforesaid, demur to or answer said petition.

2nd. That said notice was duly given and published in conformity with law, and with said order of said court.

3rd. That on or about the 2nd day of September, 1889, the said irrigation district was duly organized by and under the directions of the board of supervisors of said county, and that the first board of directors of said irrigation district was duly elected on or about the 24th day of August, 1889. That an order of said board of supervisors directing a certified copy of said order for the organization of said district to be filed for record in the office of the
286 recorder of said county, was duly made by said board of supervisors on the said 2nd day of September, 1889, but said order was not entered on the minutes of said board for said day, but was, by an order of said board made on the 8th day of July, 1890, ordered to be entered *nunc pro tunc* and was so entered, that all the proceedings of said board of supervisors under and by virtue of which said irrigation district was organized, and the said first board of directors of said district were elected, were and are, legal and regular.

4th. That said board of directors, within the time prescribed by law, duly qualified and thereupon entered — the discharge of their duties. That thereafter, at the time and in the manner prescribed by law, the present board of directors was duly elected, and thereupon duly qualified and entered upon the discharge of their duties.

5th. That all the lands in said district are situated within said county of Tulare, and the said office of said board of directors is required to be kept, and in fact is kept, at the city of Tulare, in said county.

Sixth. That the board of directors of said district, as soon as practicable after the organization of said district, to wit: on or about the 18th day of May, 1890, at a regular meeting thereof, estimated

and determined the amount of money necessary to be raised by said district, for the purpose of constructing the canals and works which were necessary for the irrigation of the lands of said district, and for the purpose of acquiring for said district the property, water and water rights that would be necessary therefor; that the said board of directors then and there estimated that the sum of five hundred thousand dollars ($500,000) was necessary to be raised for the purposes aforesaid; and determined that it was necessary and proper that the bonds of said district to the amount of five hundred
287 thousand dollars ($500,000.00) be issued by said district and that the same be sold, in order to raise the amount of money necessary for said purposes, provided the qualified electors of said district should vote in favor of the issue of said bonds.

7th. That thereupon the said board immediately called a special election, to be held in said district for the purpose, at the time and in the manner mentioned in the petition herein, and then ordered that notice of such election be given for the time and in the manner mentioned in said petition.

8th. That said special election was held in said district at the time and in the manner prescribed in said order and notice, upon the question whether the bonds of said district should be issued in the amount aforesaid; that said election was held and conducted in all respects in conformity with the provisions of said act; that the returns of said election were duly made, as mentioned in said petition; that said board of directors canvassed the returns of said election, in the manner mentioned in said petition, and therefrom ascertained and declared that a majority of all the legal votes cast at said election, were in favor of such issue of the bonds of said district.

9th. That thereafter the said board of directors, at a regular meeting thereof, ordered that the bonds of said district, in the amount of five hundred thousand dollars ($500,000) be issued in the manner and form prescribed by law; that all of said bonds be of the denomination of five hundred dollars ($500) each; that there should be attached to each of said bonds, coupons for installments of the principal of said bond-, and for the semi-annual interest thereon; that said bonds should be substantially in the form and signed, sealed and numbered as provided in said act; that they should bear interest at the rate of six (6) per cent. per annum, payable semi-annually; that the coupons for the installments of
288 the principal should be signed by the secretary of said board, and that the principal and interest of said bonds should be payable in gold coin of the United States, at the office of the treasurer of said district; that the said bonds should contain the recitals mentioned in said act, and also the recital of the result of the election aforesaid; that said bonds be payable to bearer thereof and be dated as of the same date, and that said bonds and coupons should state the dates of their respective maturities and should be substantially in the forms respectively mentioned in said petition.

10th. That immediately thereafter, to wit: on the 1st day of July, 1890, said board of directors ordered that one thousand (1,000) bonds

of said district, with the coupons thereto attached, conforming to the provisions of said act and the orders above mentioned, be prepared, executed and issued, in such manner and form in all respects, that they should become and be ready for sale by said board of directors, for and in behalf of said district.

11th. That thereafter, to wit: on the 6th day of August, 1890, said board of directors at a regular meeting thereof, by a resolution duly adopted by and entered in the minutes of said board, declared its intention to sell the said bonds to the amount of two hundred thousand dollars, ($200,000) on the 17th day of November, 1890, and ordered that a notice that sealed proposals would be received by said board at the time and place mentioned in said petition; that none of said bonds have yet been sold, but all of the same remain unsold.

Conclusions of Law.

From the foregoing facts, the court finds the following conclusions of law:

1st. That the said Tulare Irrigation District was duly
289 and regularly organized as an irrigation district and from the time of its organization to the present time, has been and now is a legal and valid irrigation district, and that all the proceedings for its organization are entitled to approval and confirmation by this court.

2nd. That the proceedings of the board of directors of said district in providing for and authorizing the issue and sale of the bonds of said district, to the amount of five hundred thousand dollars ($500,000) including the election held in said district, at which election the question whether the bonds of said district in the said amount, should be issued, was submitted to the qualified electors of said district, are legal and valid and entitled to approval and confirmation by the court.

3rd. That the proceedings, orders and resolutions of said board, for the issue of the bonds of said district, to the amount of five hundred thousand dollars ($500,000) as above recited, and the order prescribing the form of such bonds, and the order for the sale of such bonds, to the amount of two hundred thousand dollars ($200,000) as above recited, are legal and valid, and entitled to approval and confirmation by the court.

4th. That said board of directors is entitled to a judgment approving and confirming all the proceedings aforesaid mentioned in said petition.

Ordered that judgment be entered accordingly.

WM. W. CROSS, *Judge.*

(Endorsed:) No. 2329 Superior court, county of Tulare, State of California. In the matter of Tulare Irrigation District. Findings. Filed Sept. 15, 1890. John G. Knox, clerk.

290 In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

This cause came on regularly for hearing before said court on the 15th day of September, 1890, the said board of directors appearing by J. W. Davis, as its attorney, and A. L. Rhodes, as counsel, no person having demurred to or answered said petition herein filed, or appeared in opposition thereto, and it appearing that said court, on the 11th day of August, 1890, ordered that the petition herein be set down for hearing on the 15th day of September, 1890, at the opening of court on that day, at the court-room of said court, at the city of Visalia, in said county, and that the clerk of said court caused a notice in the form prescribed by law, of the filing of said petition to be given and published in the manner prescribed by law; and it further appearing that said notice has been duly given and published for the time and in the manner prescribed by law, and pursuant to said order, to wit: by the publication of said notice once a week for three successive weeks before said 15th day of September, 1890, in the Weekly Tulare Register, a newspaper published in the city of Tulare, in said county, the office of said board of directors being required to be kept, and having ever since the organization of said district had been kept in said county, and also by posting of such notices for at least twenty days before the said 15th day of September, 1890, in three public places in each of the election precincts of said district. And this cause having been tried on said 15th day of September, 1890, by the court without a jury, and the testimony, both oral and documentary having been heard, and the cause having been submitted to the court for decision, and the court having made and filed its findings of fact and con-
291 clusions of law, and its order of confirmation, and ordered that judgment be entered in accordance therewith, in favor of said petitioners.

Wherefore, by reason of the law and the findings, and order aforesaid, it is ordered, adjudged and decreed, that the said Tulare irrigation district was duly organized by and under the directions of the board of supervisors of said county, on or about the 2nd day of September, 1889; that the first board of directors of said irrigation district was duly elected; and that all the proceedings of said board of supervisors, under and by virtue of which said irrigation district was organized, and the first board of directors of said district was elected, be and the same are hereby approved and confirmed.

And it is further ordered, adjudged and decreed, that all the proceedings had by or under the authority and direction of said board of directors, for the purpose of the issue of the bonds of said district, to the amount of five hundred thousand dollars ($500,000) including in said proceedings the estimate made by said board of directors mentioned in said petition, of the amount of money, necessary to be raised for the purpose of constructing the necessary canals and works, and acquiring the necessary property therefor, and

otherwise carrying out the provisions of the said act, under which said district was organized; and including in said proceedings the election mentioned in said petition, which was called and held, upon the question whether the bonds of said district, in the amount aforesaid, should be issued; and also including in said proceedings the order of said board of directors that the bonds of said district in said amount, be issued by said board, in the manner and form prescribed by said act; and also including the form of said bonds, and the coupons thereto attached, be and the same are hereby approved and confirmed.

And it is further ordered, adjudged and decreed that the
292 said Tulare irrigation district, ever since its organization, as aforesaid, has been and now is, a duly and legally organized irrigation district, and that it possesses full power and authority to issue and sell, from time to time, the bonds of said district, to the amount of five hundred thousand dollars ($500,000) and it is ordered that said petitioner pay the costs of this proceeding.

WM. W. CROSS, *Judge.*

(Endorsed:) No. 2329 Superior court, county of Tulare, State of California. In the matter of Tulare Irrigation District. Judgment. Decree entered Sept. 15, 1890. Decrees vol. 1, page 568. Filed Sept. 15, 1890. John G. Knox, clerk.

And to said offer of said judgment-roll, said defendant and said intervenors, then and there objected on the grounds:

That the testimony offered is irrelevant, incompetent and immaterial, and that the statute of the State of California, under the provisions of which the bonds in suit are claimed to have been issued, is void, invalid and unconstitutional, as being an attempt to take property and impose obligations without due process of law, and that said statute deprives defendant and the land-owners of such district of the equal protection of the law.

That said statute does not provide for any hearing of or any day in court on the question of the formation of said irrigation district, and that the notice called for by said statute of the hearing
293 on the petition for the formation of such district, was not, nor was any other notice given; and that the notice claimed to have been given was no notice whatever, and as such was null and void, within the decision of the supreme court of the State of California, in the case of *In re* Central Irrigation District reported in the 117 Cal. Reports at page 382, and such notice was not published and does not purport to be published by authority of law, or by any one authorized to give such notice.

That defendant is not estopped to deny that said district was not duly organized or that the law was not complied with in regard to the formation thereof, and that it never had any legal existence.

That the recitals in said bonds cannot cure any defects in the proceedings leading to the issue thereof, and that said bonds are invalid, even in the hands of holders for value, and that the holders of said bonds cannot rely on said recitals, but are bound by and affected

with notice of any and all defects and irregularities, shown by the record and proceedings of said district, and are affected with constructive notice thereof; and that said records and proceedings show that said bonds are invalid in the following particulars and for the following reasons, viz:

1. That no notice was given by the board of supervisors of the county of Tulare of the election called by them, for the formation of said Tulare irrigation district.

2. That said board of supervisors did not declare the territory voted for, an irrigation district, and did not cause a copy of any order of said board declaring said district organized, as an irrigation district, duly certified or otherwise, to be filed for record in the office of the county recorder of said Tulare county.

3. That the board of directors of said Tulare irrigation
294 district, prior to the issuance of the bonds in suit, did not estimate or determine the amount of money necessary to be raised for the construction, use, supply, maintenance repairs and improvements, of the canals or works, or requiring the necessary property or rights therefor.

4. That the petition for the confirmation for the issuance and sale of the bonds in suit, the lands claimed to be in said proposed district and affected by said bonded indebtedness was not described, nor in any manner referred to so that a land-owner in said district could ascertain therefrom that the lands owned by him were affected thereby.

5. That by the order of the board of supervisors attempting to establish and define the boundaries of said Tulare irrigation district, said board so established and defined such boundaries that said district comprises, embraces and is composed of four separate and distinct bodies of land, not contiguous to each other, and which taken together, did not and do not form one body of land, and is not such a body of land as is intended by said act of the legislature to be formed into an irrigation district.

6. That none of said bonds in suit bear date of the day of their issuance, nor do said bonds conform in any respects to the said act of the legislature. That all of said bonds are dated July 1st, 1890, whereas none of the bonds in this action were issued earlier than May, 1891, and a greater portion thereof were issued between March, 1892, and February 1893, and that each and all of said bonds are made payable twenty years from said July 1st, 1890, and not twenty years from the dates of their respective issuance.

That by the law of California, the officers of said district had no power to make any recitals in said bonds curing said defects and that such recitals do not cure the same.

That the confirmation proceedings were void and without due or
any process of law, and that no proper or any notice thereof,
295 was given; and that until said district was duly organized, no such proceedings could be had, and that the statute providing for such confirmation proceeding is unconstitutional as not affording equal protection of the law or due process of law, as provided by the 14th amendment to the Constitution of the United

States, and is also void as special legislation under the constitution of California, and that the notice prescribed by said statute, was not given and said statute does not provide for due process of law.

That the statute of the State of California, under which said confirmation proceedings were attempted to be had, was and is unconstitutional and void, and in controvention to the 14th amendment to the Constitution of the United States, as attempting to deprive parties of property without due process of law. That the said proceeding was not a judicial proceeding, nor valid as such, nor did the statute provide for, nor was there given any due or sufficient notice, or such as would constitute due process of law, or render the judgment or decision of the court binding upon any party.

That it is not shown that the notice required by section 2 of the statute of California, approved March 7th, 1887, entitled, "An act to provide for the organization and government of irrigation districts," etc., was ever given, nor that the petition in regard to the formation of the defendant district was published for at least two weeks before the time at which the same was to be presented, or was published, together with a notice stating the time of the meeting at which the same would be presented, or with a notice such as was provided for by said section 2, as construed in the Central case in 117 Cal. 382, and that the irrigation district, in the absence of such notice and compliance with the statute, and the attempt to create the same, was wholly void *ab initio*, as being created without warrant of law, and that no proof of the *de facto* existence of
296 such corporation could be substituted for its *de jure* existence, by virtue of such compliance with the statute, so as to uphold any of the subsequent proceedings, or the issuance of bonds, as against the defendant herein, or the intervenors herein.

That the legislature of the State of California could not constitutionally empower the board of supervisors conclusively to determine the question, whether such due notice of the presentation of said petition had been given, nor could the legislature make the decisions of the board of supervisors conclude the judicial question of the giving of said notice, in compliance with said statute. And that the statute of 1889, of the State of California, providing for said confirmation proceedings, was unconstitutional and void, and in violation of the 14th amendment to the Constitution of the United States, in so far as it attempted, or shall be construed to attempt to provide other than the customary or required process usual in ordinary judicial proceedings *inter partes* in such confirmation proceedings, and in so far as it is attempted to substitute for such process and due process of law, a mere posting and publication, as provided for in said statute; that the legislature had no power and the statute, if construed to attempt to exercise the power by rendering said confirmation decree conclusive evidence of the due formation of said district, would be unconstitutional and opposed to said 14th amendment to the Constitution of the United States.

That in the absence of due notice of the presentation of the petition for the formation of the district, under the decision in said

Central case, 117 Cal. 382, there was no corporation which had any legal right to bind the land-owners of the land, or to affect it in any way, and no determination that the land was benefited and ownership and title of and to the land remained utterly unaffected by any of the proceedings attempted.

That the said confirmation proceeding is not judicial, but simply executive, and whatever its form, was a mere *ex parte* case,
297 and as it could not bind the bondholders, so, for lack of mutuality, it cannot bind the land-owners; in fact, it binds no one.

That the petition did not, nor did the notice posted and published of the filing thereof, in any manner describe the territory embraced within the alleged district, or in any manner identify the boundaries of such district, and that it appears on the face of the record, that the notice of the filing of the petition was not posted by the clerk of the court, or any deputy of his, but that the same was posted by a private individual without authority of law.

And further, that said statute under which said confirmation proceeding was instituted, is unconstitutional and void, and contrary to the provision of the 14th amendment to the Constitution of the United States, in that it denied to parties the equal protection of the law, and that said statute constituted and was class legislation within the meaning of said 14th amendment.

And thereupon, the court overruled the said objections and admitted the said judgment-roll in evidence, to which ruling the said defendant and said intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 2.)

Thereupon, the said counsel for plaintiff introduced the stipulation in writing, duly signed by the counsel of all the parties hereto, wherein it was stipulated and agreed, that the allegations of the complaint in intervention should be deemed and considered to be denied, which stipulation was duly approved by this court and filed herein.

Thereupon, the plaintiff offered and read in evidence from the deposition of a witness, E. Oakford, duly taken and filed herein, the testimony of said witness that he would know coupon No. 12, falling due July 1st, 1896, detached from bond No. 400, if shown to him. Thereupon, the counsel showed to the witness the said coupon No. 12, detached from said bond No. 400
298 and formerly attached to it, which said coupon so shown to the witness, was in the words and figures following, to wit:

$15.00. Interest coupon No. 12.

Tulare Irrigation District will pay to bearer, at the office of the treasurer of said district at Tulare, Tulare county, State of California, U. S. A., on July 1st, 1896, the sum of fifteen dollars, in gold coin of the United States, being semi-annual interest on bond No. 400, dated July 1st 1890.

E. OAKFORD, *Secretary.*

And the witness thereupon testified that that was coupon No. 12 formerly attached to said bond.

The witness further testified that the twelve coupons detached from said bond, including the one shown, No. 12, were in the same form as coupon No. 13, still annexed to said bond, with the exception of being numbered on the upper right-hand corner and on the back, with the numbers from one to twelve respectively, and with the exception that they fell due respectively, semi-annually, commencing January 1st, 1891, and ending July 1st, 1896.

The witness further testified that he saw said bond as originally printed, with all the coupons attached thereto, as originally printed, and that there were twelve coupons originally attached to said bond as printed, and now detached, in the same form as coupon No. 13, still attached to said bond, with the exceptions above stated; that those said twelve coupons which were formerly attached to said bond, but which were now detached were numbered from one to twelve respectively and that this bond numbered 400 then shown to the witness, and of which as then shown to the witness, Exhibit A attached to the complaint herein, is a true copy, purports upon its face to have been one of a series of bonds and in that series there were one thousand of those bonds for $500 each, and that the entire
299 series of one thousand bonds had the same coupons printed and attached thereto, with the exception of the number at the lower left-hand corner, in red ink, as were printed and attached to printed bond No. 400, and that that series of one thousand bonds was numbered from one to one thousand, inclusive; and that the coupons wereattached to each bond numbered with the number of the bond, attached thereto in the lower left-hand corner, in red ink, and that the coupons of each bond bore the witness's lithographic signature, as secretary, on the same, as the coupons attached to bond numbered 400, and that each of said one thousand bonds was signed by the witness as secretary of the board of directors of said irrigation district, and by J. W. Mackie, as president of said board, and that the witness attached the seal of the board of directors to each of said bonds, and that each of said bonds was so signed and sealed before the same was issued or disposed of by said board of directors, and before the same went out of their possession, and that the parties signing each of said bonds, as president and secretary of said board of directors, were the acting president and secretary of said board of directors at the time each of said bonds was signed respectively by them, and that all those one thousand bonds were in the same form, with the exceptions of the numbers thereon.

And thereupon, the defendant and intervenors offered in evidence the 13th paragraph of the said stipulation, filed on the 29th day of March, 1900, and the facts therein set forth, together with Exhibit B, therein referred to. And thereupon plaintiff objected to the admission in evidence of each of the facts aforesaid, on the ground that each of said facts is immaterial, irrelevant and incompetent, and on the same ground objected to the introduction of said Exhibit B, annexed to said stipulation of March 29th, 1900; which

objection was by the court, sustained, and said facts and the
300 evidence thereof excluded to which ruling the defendant and intervenors then and there each and severally, and respectively, duly excepted. (Exception No. 3.)

And thereupon, the defendant and intervenors, offered in evidence the facts set forth in paragraph 14 of said stipulation, filed March 29th, 1900, and Exhibit C, therein referred to, to which offer and to the admission of the facts and the exhibit mentioned in said paragraph 14 of said stipulation of March 29th 1900, the plaintiff objected, on the same grounds last above specified as the grounds of his objection to the offer of paragraph 13, and said Exhibit B, which objection was sustained by the court, and said facts and exhibit specified in said paragraph 14, were excluded from the evidence, to which ruling of the court the defendant and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 4.)

And thereupon, the said defendant and intervenors offered in evidence paragraph 15 of said stipulation, filed March 29th, 1900, and all the facts and the order and Exhibit D therein mentioned; to which offer the plaintiff objected, on the same grounds upon which he objected to the other offers made by the defendant and intervenors, and the court sustained the said objection, and to such ruling the defendant and intervenors then and there each and severally and respectively, duly excepted. (Exception No. 5.)

And thereupon, the defendant and intervenors, offered in evidence the facts and Exhibit E, mentioned in paragraph 16 of said stipulation, filed March 29th, 1900; to which offer, facts and exhibit, the plaintiff objected, on the same grounds above specified, as his objections to the previous offers of defendant and intervenors, and said objection was sustained by the court, and said facts and exhibit excluded, to which ruling, defendant and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 6.)

301 Thereupon, the defendant and intervenors offered in evidence, the facts set forth in paragraph 17 of said stipulation, filed March 29th, 1900, to which offer the plaintiff objected, on the same grounds specified by him, as to the other previous offers of defendant and intervenors, and said objection was sustained by the court and said facts excluded, to which ruling the defendant and intervenors each and severally, and respectively, then and there duly excepted. (Exception No. 7.)

And thereupon, the defendant and intervenors offered in evidence the facts and exhibit mentioned in paragraph 18 of said stipulation, filed March 29th, 1900, to which offer the plaintiff objected, on the same grounds above specified, to the previous offers of the defendant and intervenors, and the court sustained the said objection and excluded said offered evidence and facts, to which ruling the defendant and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 8.)

And thereupon, the said defendant and intervenors offered in evidence the facts mentioned in paragraph 19 of said stipulation, filed

March 29th, 1900, to which offer the plaintiff objected, on the same grounds specified to the previous offers of defendant and intervenors, and the court sustained said objection, and excluded said facts and the evidence so offered, to which ruling the said defendant and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 9.)

And thereupon, the defendant and intervenors offered in evidence the facts set forth in paragraph 20 of said stipulation filed March 29th, 1900, to which offer and facts plaintiff objected, on the same grounds above specified to the previous offers by defendant and intervenors, and said objection was sustained by the court, and said facts and evidence excluded, to which ruling the defendant
302 and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 10.)

And that afterwards, on the same 29th day of March, 1900, all, the parties hereto, plaintiff, defendant, and intervenors, by their respective attorneys duly made and signed, and there was filed herein a stipulation in writing, in the words and figures following, to wit:

It is hereby stipulated by all parties hereto, that the following are facts, and on the trial of this action, they, or any of them, may be offered in evidence as facts, by any party to this action, and when so offered the party not offering the same may object to such facts or any of them being admitted in evidence upon any legal grounds that may exist against their admissibility.

That on the 6th day of May, 1890, one P. J. Flynn, a civil engineer in the employ of the defendant, made a report to the board of directors of the defendant district, at which time it was ordered by said board, that two thousand copies of said report, and other information, be published. That at a meeting of said board held on the 8th day of May, 1890, it was ordered that it was the sense of said board, that five hundred thousand dollars of the bonds of said district be issued, a copy of which resolution is hereunto annexed marked "Exhibit F."

That on the 12th day of May, 1890, the report of the special committee appointed to write up proceedings of the said board of directors, with reference to securing water, was read and ordered adopted, and it was further ordered that the report of the committee adopted and signed by the board on that day, be made part of and be published with the pamphlet containing said Engineer Flynn's report, which reports, together with the report of one John S. Urton, a civil engineer, made to said board on October 29th, 1889, are contained in the printed pamphlet hereto annexed, marked "Fxhibit H."

That on May 12th, 1890, the said board adopted and
303 ordered printed upon the minutes of said board, the order testified to by the witness, E. Oakford, in his deposition taken herein, a copy of which resolution is hereunto annexed, marked "Exhibit I." That no estimate of the amount of money necessary to be raised for the purposes of constructing any proposed system of irrigation for said district, was ever entered on the minutes of said board, except as set forth in said orders and resolutions hereinbefore mentioned.

304–373 "EXHIBIT F."

"It was moved by Director Gibson and seconded by Director Cartmill, that it is the sense of the board of directors, of Tulare irrigation district, that an election be called in the district to submit the proposition of bonds being issued to the amount of five hundred thousand dollars, for the purpose of constructing necessary canals, ditches, etc., and for purchasing water rights and for the distribution of water throughout the district. The motion was carried by the following vote: Ayes, Directors Gibson, Merritt and Cartmill; noes Director De Witt."

374 "EXHIBIT I."

"On motion of Director Gibson, seconded by Director Cartmill, it was ordered that the following resolution and order, to wit: Be it by the board of directors of Tulare irrigation district, and it is by said board hereby resolved, estimated and determined, that the amount of money necessary to be raised under and pursuant to the provisions of the act of the legislature of the State of California, entitled 'An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby, for irrigation purposes,' approved the 7th day of March in the year 1887, for the purpose of constructing necessary irrigating canals and works, and acquiring the necessary property and rights therefor, and otherwise carrying out the provisions of said act in and for said district, is the sum of five hundred thousand dollars ($500,000). And it is by said board further hereby resolved and ordered that a special election in said Tulare irrigation district, be and the same is hereby called, at which shal-, be submitted to the electors of said district possessing qualifications" etc., without continuing with the balance of the resolution I will ask you if that was a part, that part I have read was a part of a resolution that was passed that day by the board of directors? A. Yes, sir.

Q. 40. I also find in the book on page 24, under date of May 6th, the following: (Reading) "The report of P. J. Flynn, civil engigineer, setting forth the result of the surveys for reservoirs and canals, together with estimated cost of construction and recommendations, was read, and upon motion of Director Mackie, seconded by Director Merritt, it was ordered that that report be accepted, subject to additions and corrections, and placed on file.

On motion of Director Mackie, seconded by Director Merritt, it was ordered that two thousand copies of the engineer's re-
375 port and such other information as may be of value to the people of the district, be printed in pamphlet form for general distribution."

376 And on the trial of this action, to wit: on the 13th day of April, 1900, aforesaid, the defendant and intervenors offered

in evidence the facts set forth in said last-mentioned stipulation and pamphlet, "Exhibit H," therein referred to, to which offer the plaintiff objected upon the same grounds hereinabove set forth, as made to other previous offers made by defendant and intervenors, and the court sustained said objection, and excluded said offer, facts and Exhibit H, to which ruling of the court, the defendant and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 11.)

And thereupon, and on said trial on said 13th day of April, 1900, the defendant and intervenors offered in evidence a certified copy of the judgment-roll in the matter of Tulare Irrigation District, in the superior court of the county of Tulare, No. 2329, which judgment-roll was duly certified by the clerk of the court, on the 14th day of October, 1899, and which said judgment-roll is in the words and figures following, to wit:

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District. No. —.

To the superior court of the county of Tulare, State of California:

The petitioner, The Board of Directors of Tulare Irrigation District, respectfully represents:

That said irrigation district was, on or about the 2nd day of September, 1889, duly organized as an irrigation district by the board of supervisors of said county, under and in pursuance of an
377 act, entitled, "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March 7th, 1887; that ever since its organization it has claimed in good faith to be, and has existed as, an irrigation district.

That the first board of directors of said irrigation district was duly elected under and in pursuance of the provisions of said act.

That thereafter, at an election held in said district on the 2nd day of April, 1890, J. W. Mackie, A. P. Merritt, W. B. Cartmill, E. De Witt, and J. F. Gibson, were duly elected as members of the board of directors of said district, and thereupon duly qualified as such, and ever since their said qualification as such they have constituted and still constitute the board of directors of said irrigation district.

That all the land of said district and embraced within its boundaries, are situated within said county of Tulare; and that the office of the board of directors of said district is required to be kept, and in fact is kept, at the city of Tulare in said county.

That the board of directors of said district, as soon as practicable after the organization of said district to wit: on or about the 12th day of May, 1890, at a regular meeting thereof, estimated and determined the amount of money necessary to be raised by said district, for the purpose of constructing the canals and works which were necessary for the irrigation of the land of said irrigation dis-

trict, and for the purpose of acquiring for said district the property, water and water rights which would be necessary therefor; that said board of directors then and there estimated that the sum of five hundred thousand dollars was necessary to be be raised for the purpose aforesaid; and that said board determined that it was
378 necessary and proper that bonds of said district to the amount of five hundred thousand dollars ($500,000), in all respect-conforming to the provisions of said act, be issued by said district, and that the same be sold in order to raise the amount of money necessary for said purposes, provided the qualified electors of said district should vote in favor of the issue of such bonds.

That thereupon said board immediately called a special election to be held in said district, by the electors of said district, who possessed the qualifications prescribed by said act, at which election there should be submitted to them the question whether or not such bonds of said district should be issued in the amount so determined by said board; and then and there ordered said special election to be held on Saturday, the 7th day of June, 1890; and then and there ordered that notice of said election be given by posting notices thereof in each election precinct in said district, for at least twenty days before the time fixed as aforesaid for said election, and also by the publication of said notice once a week for at least three weeks before the time so fixed as aforesaid for said election, in the Weekly Tulare Register, a newspaper which was then published at the city of Tulare, in said county; that the notices of said election were duly posted and published in conformity with the said order, and the provisions of said act, and were caused to be so posted and published by the order of said board.

That at the time fixed, as aforesaid, for said special election, such election was in fact held in said district by the qualified electors thereof, upon the said question whether or not bonds of said district should be issued in the amount aforesaid; that said election was held and conducted in all respects in conformity with the provisions of said act; that the returns from said election from all the election precincts in said district were duly filed in the office of said board of directors; that
379 thereafter, to wit: on the 9th day of June, 1890, the said board of directors duly canvassed the said returns, and ascertained there from the result of said election, and then and there ascertained, found and declared as and for the result of said election, that three hundred and ninety-eight (398) legal votes were cast at said special election; that three hundred and forty-eight (348) legal votes were cast at said special election for and in favor of such issue of said bonds of said district; that fifty (50) legal votes were cast at said special election against such issue of said bonds; that a majority of the legal votes cast at said election were in favor of the issue of said bonds; and that said board caused the result of said election to be entered upon the minutes of said board; that thereafter, at a regular meeting of said board of directors, to wit: on or about the 1st day of July, 1890, said board of directors ordered that the bonds of said irrigation district, in the said amount of five

hundred thousand dollars, be issued in the manner and form prescribed by law, and said board of directors then and there further ordered that all of said bonds should be of the denomination of five hundred dollars each, and that there should be attached to each of said bonds, coupons for the installments of the principal of said bonds, and for the semi-annual interest on said bonds; that said bonds should be substantially in the form, and be signed, sealed and numbered, as is provided in said act; that they should bear interest at the rate of six per cent. per annum, payable semi-annually, on the first days of January and July of each year, that the coupons for the interest, and the coupons for the installments of the principal, should each be signed by the secretary of said board; that both the principal and interest of said bonds should be payable in the gold coin of the United States, and at the office of the treasurer of said district; that said bonds should contain the recitals mentioned in said act; and also the recitals in the result of the election
380 aforesaid, in favor of the issue of such bonds; that said bonds be made payable to the bearer thereof; that the said bonds should be dated as of the same date, and that said bonds and coupons should state the dates of their respective maturities, and should be substantially in the following forms respectively:

No. —. $500.

UNITED STATES OF AMERICA. *Tulare Irrigation District, Tulare County, State of California.*

Tulare irrigation district, a public corporation organized and existing under and in pursuance of the laws of the State of California, for value received, promise- to pay to the bearer hereof, at the office of the treasurer of said district, the sum of five hundred dollars, in gold coin of the United States, in installments as follows, to wit: At the expiration — eleven years, five per cent. of said sum; at the expiration of twelve years, six per cent. of said sum; at the expiration of thirteen years, seven per cent. of said sum; at the expiration of fourteen years, eight per cent. of said sum; at the expiration of fifteen years, nine per cent. of said sum; at the expiration of sixteen years, ten per cent. of said sum; at the expiration of seventeen years, eleven per cent. of said sum; at the expiration of eighteen years, thirteen per cent. of said sum; at the expiration of nineteen years, fifteen per cent. of said sum; at the expiration of the twentieth year, sixteen per cent. of said sum; said installments to be paid as provided in and only upon presentation and surrender of the installment coupons hereunto attached. Said — further promises to pay interest on said sum at the rate of six per cent. per annum, payable semi-annually, on the first day of January and July of each year, in gold coin of the United States, on presentation and surrender at the office of the treasurer of said district of the respective interest coupons hereunto attached.

381 This bond is a series of bonds, amounting in the aggregate to five hundred thousand dollars, caused to be issued by the board of directors of said Tulare irrigation district by authority of

and pursuant to the provisions of an act of the legislature of the State of California, entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March 7, 1887; and also by authority of and in accordance with the vote of the qualified electors of said irrigation district at a special election duly held on the 7th day of June, 1890.

The principal and interest of said bonds are to be paid out of the proceeds of annual assessments to be levied upon the lands of the district, amounting to — acres of the present assessed value of $—.

In witness whereof, this bond has been signed by the president and secretary of the board of directors of said Tulare irrigation district, and the seal of said board has been affixed hereto, this — day of ——, in the year one thousand eight hundred and ninety.

——— ———
President of said Board.

[SEAL.]

——— ———
Secretary of said Board.

$—. Installment coupon No. —.

Tulare irrigation district will pay to bearer, at the office of the treasurer of said district, at Tulare, Tulare county, State of
382 California, U. S. A., on —— 1, 190– the sum of — dollars, in gold coin of the United States, being — installment of — per cent. of the principal of bond No. — dated —— —, 1890.

Interest on said installment will cease after maturity.

—— ——, *Secretary.*

$—. Interest coupon No. —.

Tulare irrigation district will pay to bearer, at the office of the treasurer of said district, at Tulare, Tulare county, State of California, U. S. A., on —— 1, 18—, the sum of — dollars, in gold coin of the United States, being semi-annual interest on bond No. — dated —— —, 1890. —— ——, *Secretary.*

That immediately thereafter, to wit: on the 1st day of July, 1890, said board of directors ordered that one thousand bonds of said district (with the coupons thereto attached), conforming to the provisions of said act, and to the foregoing order, be prepared, executed and issued in such manner and form in all respects, that they should become and be ready for sale by said board of directors for and in behalf of said district.

That thereafter, to wit: on the 6th day of August, 1890, said board of directors, at a regular meeting thereof, by a resolution duly adopted by, and entered in the minutes of said board, declared its intention to sell said bonds to the amount of two hundred
383 thousand dollars, on the 17th day of November, 1890, and ordered that a notice that sealed proposals would be received

by said board at its office in the city of Tulare, up to the hour of one p. m. of the 17th day of November, 1890, for the purchase of said bonds last aforesaid, be published for twenty days before said day, in the following-named daily newspapers: The San Francisco Journal of Commerce, published in the city and county of San Francisco, the Sacramento Bee, published in the city of Sacramento, and the Los Angeles Express, published in the city of Los Angeles.

That none of said bonds have been sold, but all of the same remain unsold.

Wherefore, your petitioner prays that the proceedings aforesaid, for the issue and sale of said bonds of said irrigation district may be judicially examined, approved and confirmed by this court.

J. W. DAVIS,
Attorney for Petitioner.

A. L. RHODES, *Of Counsel.*

(Endorsed:) No. 2329. Superior court, Tulare county. In the matter of Tulare irrigation district.—Petition for confirmation—Filed Aug. 11, 1890. John G. Knox, clerk, by —— ——, deputy. J. W. Davis, attorney for petitioner.

384 In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District. No. —.

Upon reading and filing the petition of the board of directors of Tulare irrigation district, praying that the proceedings for the issue and sale of the bonds of said district may be judicially examined, approved and confirmed by this court, it is ordered by the court, that said petition be set down for hearing by the court, on the 15th day of September, 1890, at the opening of the court on that day, at the court-house in the city of Visalia, in the county aforesaid; and that the clerk of this court cause a notice of the filing of said petition to be given and published in the manner and for the time prescribed by law; that he post said notice in three public places in each election precinct in said irrigation district, for at least twenty days before said day, and that he cause said notice to be published in the Weekly Tulare Register, a newspaper in the city of Tulare, in said county, once a week for three successive weeks before said day; that said notice shall state the time and place as aforesaid for the hearing of said petition, and shall state the prayer of said petition, and that any person interested in the organization of said irrigation district or in the proceedings for the issue and sale of said bonds, may, on or before the day aforesaid, demur to or answer said petition.

Aug. 11, 1890.

WM. W. CROSS, *Judge.*

385 (Endorsed:) No. 2329. Superior court, Tulare county. In the matter of Tulare irrigation district. Order setting petition for hearing and directing — to be given—Filed Aug. 11,

1890. John Cutler, Jr., clerk by —— ——, deputy. Recorded Aug. 13, 1890.

Affidavit of Publication.

STATE OF CALIFORNIA, } ss:
County of Tulare, }

Miles Ellsworth being duly sworn, upon his oath deposes and says: My name is Miles Ellsworth. I am a resident of the county of Tulare, State of California, and am over the age of twenty-one years. I am now, and ever since the first day of August, 1890, have been one of the editors, printers and publishers of the Weekly Tulare Register, a newspaper printed and published in Tulare, in said Tulare county, and as such had charge of all the advertisements published in said newspaper since said first day of August, 1890, and I further state that the notice of hearing petition, of which the the copy annexed on the margin hereof is a true printed copy, which printed copy is hereby referred to and made part hereof, was published in said newspaper once each week for five successive weeks, the said notice being in each number of the regular and entire issue, and not in any supplement thereof, and during each and all the times specified as follows, to wit: In the issue of August 15th, 1890; in the issue of August 22, 1890; in the issue of August 29, 1890; in the issue of September 5, 1890; in the issue of September 12, 1890.

MILES ELLSWORTH.

386 Subscribed and sworn to before me this 13th day of September, 1890.

J. W. DAVIS,
Notary Public, Tulare Co., Cal.

[SEAL.]

(For printed notice referred — in above affidavit see next page.) (Clerk.)

Notice of Hearing of Petition.

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

Notice is hereby given that the petition of the Board of Directors of Tulare Irrigation District, praying that the proceeding for the issue and sale of the bonds of said district, may be judicially examined, approved and confirmed by said court, was on the 11th day of August, 1890, filed in said court; that said court fixed as the time for the hearing of said petition, the 15th day of September, 1890, at the opening of the court on that day, at the court-house in the city of Visalia, county of Tulare; and notice is further given that any person interested in the organization of said district, or in the pro-

ceedings for the issue or sale of said bonds, may on or before the day last above mentioned, demur to or answer said petition.

By order of the court,

Attest:

[SEAL.] JOHN G. KNOX, *Clerk.*

(The foregoing is the copy of the printed notice referred — in the affidavit.) (Clerk.)

(Endorsed:) No. 2329. Superior court, county of Tulare. In the matter of Tulare Irrigation District. Proof of publi-
387 cation of notice of hearing petition for confirmation. Filed Sept. 15, 1890. John G. Knox, clerk. J. W. Davis, att'y for petitioner.

Notice of Hearing of Petition.

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

Notice is hereby given that the petition of the Board of Directors of Tulare Irrigation District, praying that the proceeding for the issue and sale of the bonds of said district may be judicially examined, approved and confirmed by said court, was, on the 11th day of August, 1890, filed in said court; that said court fixed as the time for the hearing of said petition, the 15th day of September, 1890, at the opening of the court on that day, at the court-house in the city of Visalia, county of Tulare and notice is further given that any person interested in the organization of said district or in the proceedings for the issue or sale of said bonds, may, on or before the day last above mentioned, demur to or answer said petition.

By order of the court.

Attest:

[SEAL.] JOHN G. KNOX, *Clerk.*

(The foregoing is a copy of the notice referred — in the following annexed affidavit.) (Clerk.)

STATE OF CALIFORNIA, } ss:
County of Tulare, }

388 Edward Oakford, being duly sworn, says:

I am, and at all the times hereinafter mentioned was, secretary of the board of directors of Tulare irrigation district; on the 19th day of August, 1890, I posted notices of hearing of petition of which the annexed is a true copy, in three public places in each election precinct in said district, to wit:

In precinct No. 1.—On fence along public road on southwest quarter of section 36, township 19 south, range 24 east of Mount Diablo meridian; on fence along public road on southwest quarter of section 6, township 20 south, range 25 east of Mount Diablo meridian; and on fence along public road at northeast corner of

the northeast quarter of section 13, township 20 south, range 24 east of Mount Diablo meridian.

In precinct No. 2.—On gate post at east side of public road on west side of southwest quarter of section 22 township 19 south, range 24 east of Mount Diablo meridian; on fence along public road, at northeast corner of northwest quarter of said section 32, said township and range, and on stake near the intersection of public roads on the southeast corner of lot number 20, in Russell colony.

In precinct No. 3.—On an oak tree at south side of public road on northeast quarter of section 11, township 20 south, range 23 east of Mount Diablo meridian; on fence at south side of public road; on section 24, said township and range, and on fence along public road at southeast corner of the southeast quarter of section 16, township 20 south, range 24 east of Mount Diablo meridian.

Precinct No. 4.—On bulletin-board at the post-office; on awning post in front of Grand hotel, on Front street; and on bulletin-board in front of city clerk's office, on Kern street all in the city of Tulare.

389 In precinct No. 5.—On fence along public road on north side of northwest quarter of section 30, township 20 south, range 24 east of Mount Diablo meridian; on fence along public road on east side of east half of section 32, said township and range; and on fence post on east side of public road on section 27, said township and range.

In addition to the above, I posted one of said notices in the office of the board of trustees of said district, in the city of Tulare.

EDWARD OAKFORD.

Subscribed and sworn to before me this 8th day of September, 1890.

[SEAL.] J. W. DAVIS,
Notary Public, Tulare County, Cal.

(For printed notice referred to in above affidavit see next page.) (Clerk.)

(Endorsed:) No. 2329. Superior court, county of Tulare. In the matter of Tulare Irrigation District. Proof of posting notice of hearing petition for confirmation. Filed Sept. 15, 1890. John G. Knox, clerk.

390 In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

This cause having been regularly brought on to hearing before said court on the 15th day of September, 1890, the said board of directors appearing by J. W. Davis, its attorney, and A. L. Rhodes, as counsel, no person having demurred to or answered said petition, herein filed, or appeared in opposition thereto.

And the evidence being heard and the cause being submitted to

the court for its decision, the court now finds the following facts and conclusions of law, in the cause

1st. That on the 11th day of August, 1890, the said court ordered the petition herein to be set down for hearing on the 15th day of September, 1890, at the opening of court on that day, at the court-room of said court, at the city of Visalia, in said county, and that the clerk of this court cause a notice of the filing of said petition to be given and published in the manner prescribed by law, to wit: by the publication of said notice, once a week for three successive weeks before the said 15th day of September, 1890, in the Weekly Tulare Register a newspaper published in the city of Tulare in said county, and also by posting such notices for at least twenty days before the said 15th day of September, 1890, in three public places in each of the election precincts of said district, and that said notice should state the time and place as aforesaid, for the hearing of said petition and the prayer of said petition, and that any person interested in the organization of said district or
391 in the proceedings for the issue or sale of said bonds, may, on or before the day aforesaid, demur to or answer said petition.

2nd. That said notice was duly given and published in conformity with law, and with said order of said court.

3rd. That on or about the 2nd day of September, 1889, the said irrigation district was duly organized by, and under the directions of the board of supervisors of said county, and that the first board of directors of said irrigation district was duly elected on or about the 24th day of August, 1889. That an order of said board of supervisors directing a certified copy of said order for the organization of said district to be filed for record in the office of the recorder of said county was duly made by said board of supervisors on the said 2nd day of September, 1889, but said order was not entered on the minutes of said board for said day, but was, by an order of said board made on the 8th day of July, 1890, ordered to be entered *nunc pro tunc* and was so entered, that all the proceedings of said board of supervisors, under and by virtue of which said irrigation district was organized, and the said first board of directors of said district were elected, were, and are, legal and regular.

4th. That said board of directors, within the time prescribed by law, duly qualified, and thereupon entered upon the discharge of their duties. That thereafter, at the time and in the manner prescribed by law, the present board of directors was duly elected, and thereupon duly qualified, and entered upon the discharge of their duties.

5th. That all the lands in said district are situated within said county of Tulare, and the said office of said board of directors is required to be kept, and in fact, is kept, at the city of Tulare, in said county.

6th. That the board of directors of said district, as soon as practicable after the organization of said district to wit: on or about the 18th day of May, 1890, at a regular meeting thereof,
392 estimated and determined the amount of money necessary to be raised by said district, for the purpose of constructing

the canals and works which were necessary for the irrigation of the lands of said district, and for the purpose of acquiring for said district the property, water and water rights that would be necessary therefor; that the said board of directors then and there estimated that the sum of five hundred thousand dollars ($500,000.00) was necessary to be raised for the purposes aforesaid; and determined that it was necessary and proper that the bonds of said district, to the amount of five hundred thousand dollars ($500,000.00) be issued by said district and that the same be sold in order to raise the amount of money necessary for said purposes, provided the qualified electors of said district should vote in favor of the issue of said bonds.

7th. That thereupon, the said board immediately called a special election to be held in said district for the purpose, at the time and in the manner mentioned in the petition herein and then ordered that notice of such election be given for the time and in the manner mentioned in said petition.

8th. That said special election was held in said district at the time and in the manner prescribed in said order and notice; upon the question whether the bonds of said district should be issued in the amount aforesaid; that said election was held and conducted in all respects in conformity with the provisions of said act; that the returns of said election were duly made as mentioned in said petition; that said board of directors canvassed the returns of said election in the manner mentioned in said petition, and therefrom ascertained and declared that a majority of all the legal votes cast at said election were in favor of such issue of the bonds of said district.

9th. That thereafter, the said board of directors at a regular meeting thereof, ordered that the bonds of said district in
393 the amount of five hundred thousand dollars ($500,000) be issued in the manner and form prescribed by law; that all of said bonds be of the denomination of five hundred dollars (500) each; that there should be attached to each of said bonds, coupons for installments of the principal of said bond, and for the semi-annual interest thereon; that said bonds should be substantially in the form and signed, sealed and numbered as provided in said act; that they should bear interest at the rate of six (6) per cent. per annum, payable semi-annually; that the coupons for the installments of the principal should be signed by the secretary of said board, and that the principal and interest of said bonds should be payable in gold coin of the United States, at the office of the treasurer of said district; that the said bonds should contain the recitals mentioned in said act, and also the recital of the result of the election aforesaid; that said bonds be payable to bearer thereof, and be dated as of the same date, and that said bonds and coupons should state the dates of their respective maturities and should be substantially in the forms respectively mentioned in said petition.

10th. That immediately thereafter, to wit: on the first day of July, 1890, said board of directors ordered that one thousand (1,000) bonds of said district, with the coupons thereto attached, conform

ing to the provisions of said act, and the orders above mentioned, be prepared, executed and issued in such manner and form in all respects; that they should become and be ready for sale by said board of directors for and in behalf of said district.

11th. That thereafter, to wit: on the 6th day of August, 1890, said board of directors, at a regular meeting thereof, by a resolution duly adopted by and entered in the minutes of said board, declared its intention to sell the said bonds to the amount of two hundred thousand dollars ($200,000) on the 17th
394 day of November, 1890, and ordered that a notice that sealed proposals be received by said board at the time and place mentioned in said petition; that none of said bonds have yet been sold, but all of the same remain unsold.

Conclusions of Law.

From the foregoing facts, the court finds the following conclusions of law:

1st. That the said Tulare irrigation district was duly and regularly organized as an irrigation district, and from the time of its organization to the present time has been and now is a legal and valid irrigation district, and that all the proceedings for its organization are entitled to approval and confirmation by this court.

2nd. That the proceedings of the board of directors of said district in providing for and authorizing the issue and sale of the bonds of said district, to the amount of five hundred thousand dollars ($500,000) including the election held in said district, at which election the question whether the bonds of said district, in the said amount should be issued, was submitted to the qualified electors of said district, are legal and valid, and entitled to approval and confirmation by the court.

3rd. That the proceedings, orders and resolutions of said board for the issue of the bonds of said district to the amount of five hundred thousand dollars ($500,000), as above recited, and the order prescribing the form of such bonds, and the order for the sale of such bonds to the amount of two hundred thousand dollars ($200,000) as above recited, are legal and valid, and entitled to approval and confirmation by the court.

4th. That said board of directors is entitled to a judgment approving and confirming all the proceedings aforesaid mentioned in said petition.

395 Ordered that judgment be entered accordingly.

WM. W. CROSS, *Judge.*

(Endorsed:) No. 2329. Superior court, county of Tulare. State of California. In the matter of Tulare irrigation district. Findings. Filed Sept. 15, 1890. John G. Knox, clerk.

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

This cause came on regularly for hearing before said court, on the 15th day of September, 1890, the said board of directors appearing by J. W. Davis, as its attorney, and A. L. Thodes as counsel, no person having demurred to or answered said petition herein filed, or appeared in opposition thereto. And it appearing that said court, on the 11th day of August, 1890, ordered that the petition herein be set down for hearing on the 15th day of September, 1890, at the opening of court on that day at the court-room of said court at the city of Visalia, in said county, and that the clerk of said court caused a notice, in the form prescribed by law, of the filing of said petition to be given and published in the manner prescribed by law;
396 and it further appearing that said notice has been duly given and published for the time and in the manner prescribed by law and pursuant to said order, to wit: by the publication of said notice once a week for three successive weeks before said 15th day of September, 1890, in the Weekly Tulare Register, a newspaper published in the city of Tulare in said county, the office of said board of directors being required to be kept, and having ever since the organization of said district been kept in said county, and also by posting of such notices for at least twenty days before the said 15th day of September, 1890, in three public places in each of the election precincts of said district. And this cause having been tried on said 15th day of September, 1890, by the court without a jury, and the testimony, both oral and documentary, having been heard, and the cause having been submitted to the court for decision, and the court having made and filed its findings of fact and conclusions of law, and its order of confirmation, and ordered that judgment be entered in accordance therewith in favor of said petitioners;

Wherefore, by reason of the law and the findings and order aforesaid, it is ordered, adjudged and decreed that the said Tulare irrigation district was duly organized by and under the directions of the board of supervisors of said county, on or about the 2nd day of September, 1889; that the first board of directors of said irrigation district was duly elected; and that all the proceedings of said board of supervisors, under and by virtue of which said irrigation district was organized and the first board of directors of said district was elected, be, and the same are hereby approved and confirmed.

And it is further ordered, adjudged and decreed that all the proceedings had by or under the authority and direction of said board of directors, for the purpose of the issue of the bonds of said
397 district, to the amount — five hundred thousand dollars ($500,000.00) including in said proceedings the estimate made by said board of directors mentioned in said petition, of the amount of money necessary to be raised for the purpose of constructing the necessary canals and works, and acquiring the necessary property therefor, and otherwise carrying out the provisions of the said act under which said district was organized; and including in said

proceedings the election mentioned in said petition, which was called and held upon the question whether the bonds of said district in the amount aforesaid, should be issued; and also including in said proceedings the order of said board of directors that the bonds of said district, in said amount be issued by said board, in the manner and form prescribed by said act; and also including the form of said bonds, and the coupons thereto attached, be, and the same are hereby approved and confirmed.

And it is further ordered, adjudged and decreed that the said Tulare irrigation district, ever since its organization as aforesaid has been, and now is a duly and legally organized irrigation district, and that it possesses full power and authority to issue and sell, from time to time, the bonds of said district, to the amount of five hundred thousand dollars, ($500,000.00) and it is ordered that said petitioner- pay the costs of this proceeding.

WM. W. CROSS, *Judge.*

(Endorsed:) No. 2329. Superior court, county of Tulare, State of California. In the matter of Tulare irrigation district. Judgment. Decree entered, Sept. 15, 1900. Decrees vol. 1, page 568. Filed Sept. 15, 1890. John G. Knox, clerk.

398 In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

Now comes as defendants B. W. Jauchius, J. L. Gould, George C. Kelly and Ralph Jones, and for answer to the petition of the board of directors of Tulare irrigation district filed in the above-entitled matter, deny and allege as follows:

Deny that said irrigation district was on or about the 2nd day of September, 1890, or at any other time, duly or otherwise organized as an irrigation district, by the board of supervisors of Tulare county, under or in pursuance of an act entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes," approved March 7th, 1887, or any other act, or at all.

Deny that ever since its said organization or since any other time, it has claimed in good faith or otherwise to be or has existed as an irrigation district.

Allege that the petition presented to the board of supervisors of said Tulare county for the formation of said irrigation district, was not signed by fifty or by a majority of the freeholders owning land in said irrigation district.

Allege that no notice whatever was given by said petitioners or by any one else of the time of the meeting at which said petition would be presented to said board of supervisors and that these taxpayers had no notice thereof and did not know when the same would be presented to said board.

Allege that said board of supervisors in disregard of said petition and the rights of said petitioners and in violation of the
399 express provisions of said act authorizing the formation of said district, modified and changed the proposed boundaries of said district as set forth in said petition, so as to except and exclude from said district fully thirty thousand acres of land, all of which lands so excluded was susceptible of irrigation from the same system of works applicable to the other lands in said proposed district and would be similarly benefited thereby;

Allege that upon the hearing of said petition said board of supervisors established and defined the boundaries of said proposed district, but said boundaries so established and defined comprised and embraced four separate and distinct bodies of land not contiguous to each other, which taken together did not, and do not form one tract of land and is not such a body of land as is contemplated or intended by said act to be organized as an irrigation district, nor is it such a body of land as was petitioned to be organized into an irrigation district.

Allege that said board of supervisors did not cause a copy of its order declaring the territory petitioned for duly organized as an irrigation district, duly certified or otherwise or at all, to be filed for record in the office of the county recorder of said Tulare county.

Deny that the board of directors of said district as soon as practicable after the organization of said district, or at any time or at all estimated or determined the amount of money necessary to be raised by said district for the purpose of constructing canals and works or canals or works which were necessary for the irrigation of the lands of said district, or for the purpose of acquiring for said district the property or water or water rights which would be necessary therefor; and deny that said board of directors, then and there, or at any time or place estimated that the sum of five hundred thousand dollars was necessary to be raised for the purpose aforesaid or for any purpose.

Allege that at no time since the organization of said district has the board of directors thereof estimated and determined the
400 amount of money necessary to be raised by said district for the purpose of constructing the canals and works which were necessary for the irrigation of the lands of said district and for the purpose of acquiring for said district the property, water and water rights which would be necessary therefor.

Allege that at no time since the organization of said district has its board of directors ever established or located or adopted any system of works for a mode of irrigation of the lands of said district, from a common source of supply, nor was any common source of supply for said district ever located or established for any irrigation system or systems of orrigation works by said board of directors, nor was any system of irrigation works ever established by said board of directors for said district and no line of canals with necessary branches and water therefor to irrigate the lands embraced within said district was ever devised, fixed or determined upon by said board or by any other person, and at no time has said board

determined upon, located or considered any plan embracing a supply of water to irrigate the lands of said district.

Allege that no plans or specifications of or for any system of irrigation or irrigation works or of canals or water supply were ever made whereby and upon which an estimate could be made by said board, and no estimate was ever made by them.

Allege that said board of directors did not at any time estimate that the sum of five hundred thousand dollars, or any other sum would be necessary to be raised for the purposes mentioned in said petition.

Deny that said board of directors ever determined that it was necessary and proper, or necessary or proper that bonds of said district to the amount of five hundred thousand dollars, or any other sum, conforming in all or in any respect to the provisions of said act, or at all, should be issued by said district or that the same should be sold in order to raise the amount of money necessary for said purposes.

401 Allege that said board of directors did not at any time determine that it was necessary or proper that the bonds of said district in the amount of five hundred thousand dollars or in any other amount, be issued by said district, and be sold to raise the money necessary for the purpose of constructing the canals and works for the irrigation of the lands of said district and for the acquisition of the property, water and water rights necessary therefor.

Allege that at all times since the alleged organization of said district, the defendant B. W. Jauchius has been and now is the owner and in possession of the real estate situate within the boundaries of said district and as part thereof, described as lots 24 and 25, in block 86, and lots 11 to 16 inclusive in block 70 of the city of Tulare; that defendant J. L. Gould has been since the alleged organization of said district and now is the owner and in possession of the real estate situate within the boundaries of said district and forming a part thereof, described as the west half of the northwest quarter of section 14, in township 20 south of range 23 east; that the defendant George G. Kelly has ever since the alleged organization of said district been and now is the owner and in possession of the real estate situate within the boundaries of said district and forming a part thereof, described as the south half of section 33 in township 19 south of range 24 east; and that defendant Ralph Jones has ever since the alleged organization of said district been the owner and in the possession of the real estate within the boundaries of said district and forming a part thereof described as the lots 1 to 16 inclusive in block 160 in said city of Tulare.

Wherefore, the above-named defendants pray that the approval and confirmation of the proceedings had by said board of directors as aforesaid and as alleged in said petition filed herein, be denied by this court, and that a decree may be had that said district is illegally organized and void.

That all the bonds issued as set forth in said petition be
402 declared void and not a lien on the lands of said district and

for such other and further relief in the premises as may seem meet and agreeable to equity and for costs of suit.

C. L. RUSSELL,
G. W. ZARTMAN,
Attorneys for Defendants.

STATE OF CALIFORNIA, }
County of Tulare. }

B. W. Jauchius being duly sworn, deposes and says:
I am one of the defendants in the above-entitled proceedings. I have read the foregoing answer and know the contents thereof. and the same is true of my own knowledge, except as to the matters therein stated on information and belief, and as to those matters, I believe it to be true.

B. W. JAUCHIUS.

Subscribed and sworn to before me this 16th day of April, 1898.
[SEAL.]
G. W. ZARTMAN,
Notary Public in and for the County of Tulare, State of California.

(Endorsed:) No. 2329. In the superior court of Tulare county State of California. In the matter of Tulare Irrigation District. Answer of defendants, B. W. Jauchius, *et al.* Filed April 18, 1898. W. H. Hammond, clerk. Guy Gilmer, deputy.

403 In the Superior Court, County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

This is a proceeding brought about eight years ago to confirm by judicial decree, the organization of the above-named district.

Heretofore a decree of confirmation of such organization has been made and entered herein, and subsequent to such decree being entered, on complaint of Jauchius and others, such decree was vacated and set aside. That matter was presented to the court on demurrer to the complaint, which demurrer was submitted to the court without argument, and at once overruled, in accordance with a well-established rule of this court, to overrule all demurrers that are submitted without argument. No answer was made to the complaint, and the petitioner took the relief asked for by default, and the decree of confirmation was set aside by the order of the court.

This last order is not now before me for review. Indeed, it would seem that the only proper way to review it is by appeal to the Supreme Court.

The questions for the court to determine now are: "Was the district properly organized under the Wright act," and "Has the court jurisdiction to enter a decree of confirmation herein?"

The Wright act provides as a first step in the organization of an irrigation district that a petition signed by fifty freeholders, owning land in the proposed district, should be presented to the board of supervisors.

In this proceeding the burden of proof rested on the pe-
404 titioners to show that at least fifty of the signers of the petition to the board of supervisors were land-owners in the district. This fact should have been proved by competent evidence. The records of the board of supervisors was neither sufficient nor competent to prove such fact, and there seems to be no other evidence on the subject.

The district as platted consists of several distinct tracts of land not contiguous to each other. Tracts of land which corner upon each other are not contiguous.

Linn County Bank *v.* Hopkins, 28 Pacific Reporter, 606.

I think it was the intention of the legislature, as expressed in the Wright act and acts supplemental thereto, that an irrigation district should consist of one contiguous tract of land.

The evidence in the case shows that no estimates were made as to the expense of, and no plan or system of ditches were adopted for the irrigation of the district prior to the issuance of bonds.

Let the prayer of the petition be denied and the organization of the district be declared illegal.

The defendant will prepare findings in accordance with this opinion.

WHEATON A. GRAY,
Judge of Superior Court.

(Endorsed:) No. 2329. Superior court of the county of Tulare. In the matter of Tulare Irrigation District. Opinion of court. Filed Nov. 18th, 1898. Wm. H. Hammond, clerk. Guy Gilmer, deputy.

405 In the Superior Court of the State of California in and for the County of Tulare.

In the Matter of Tulare Irrigation District.

This cause having been regularly brought on for hearing before said court on the 17th day of June, 1898, upon the issues presented by the petition of the Board of Directors of Tulare Irrigation District, and the answer thereto, the said Board of Directors, petitioners herein, appearing by E. W. Holland, its attorney, and the defendants B. W. Jauchius, J. L. Gould, George G. Kelly and Ralph Jones, appearing by their attorneys C. L. Russell and G. W. Zartman, and the evidence having been heard by the court upon the issues herein aforesaid, and the cause having been submitted to the court for its decision, the court now finds the following facts and conclusions of law in the cause;

First. That said Tulare irrigation district was not on or about the 2nd day of September, 1889, or on any other day or at all, duly or otherwise organized as an irrigation district, by the board of supervisors of Tulare county, and never was organized as an irrigation district under the act of the legislature of the State of California mentioned in the petition of petitioners or any other act, and has

not since the times stated in said petition claimed in good faith or otherwise, to be, and has not existed as an irrigation district.

Second. That the first board of directors of said district never were duly elected under and in pursuance of the act mentioned in said petition; and that J. W. Mackie, A. P. Merritt, W. B. Cartmill, E. De Witt and J. F. Gibson were not on the second day of April, 1890, duly elected as members of the board of directors of
406 said district, and they have not since their qualification as such directors constituted, and did not at the time of the filing of said petition, constitute the board of directors of said irrigation district.

Third. That all the land- of said district embraced within its boundaries are situate in the county of Tulare.

Fourth. That the petition presented to the board of supervisors of said Tulare county, for the formation of said district, was not signed by fifty or a majority of the freeholders owning land in said irrigation district.

Fifth. That no notice whatever was given by petitioners or by any one else, of the time of the meeting of the board of supervisors, at which the petition for the formation of said district would be presented; and these defendants had no notice thereof and did not know that the same would be presented to the board of supervisors.

Sixth. That the board of supervisors to whom the petition for the formation of said Tulare irrigation district was presented, in disregard to said petition and its provisions and the rights of the petitioners therein named and thereto subscribed, and in violation of the express provisions of the act of the legislature authorizing the formation of said district, modified and changed the proposed boundaries of said district as set forth in said petition so as to except and exclude from said district fully 30,000 acres of land, all of which land so excluded was susceptible of irrigation from the same system of works applicable to the other lands in said proposed district, and which would be similarly benefited thereby.

Seventh. That upon the hearing of said petition said board of supervisors established and defined the boundaries of said proposed district, but said boundaries so established and defined comprise and embrace four separate and distinct bodies of land not contiguous to each other, which taken together did not and do not form one tract of land, and is not such a body of land as is con-
407 templated or is intended by said act to be organized as an irrigation district, nor is it such a body of land as was petitioned to be organized into an irrigation district.

Eight. That said board of supervisors did not cause a copy of its order declaring the territory petitioned for duly organized as an irrigation district, duly certified as such, to be filed for record in the office of the county recorder of said Tulare county.

Nine. That the board of directors of said district did not as soon as practicable after the organization of said district nor at any time, nor at all, estimate or determine the amount of money necessary to be raised by said district for the purpose of constructing canals and works, or canals or works necessary for the irrigation of the lands

of said district, or for the purpose of acquiring for said district the property or water, or water rights which would be necessary therefor.

That the board of directors of said district have not at any time or place estimated that the sum of $500,000 was necessary to be raised for the purpose of constructing canals and works, or canals or works necessary for the irrigation of the lands of said district, or for the purpose of acquiring for said district property or water, or water rights necessary therefor, or for any other purpose. And at no time since the organization of said district has the board of directors thereof estimated and determined the amount of money necessary to be raised by said district for the purpose of constructing the canals and works necessary for the irrigation of the lands of said district, and for the purpose of acquiring for said district the property, water and water rights which would be necessary therefor.

Ten. That at no time since the organization of said district has its board of directors ever established or located or adopted any system of irrigation for a mode of irrigation of the lands of
408 said district from a common source of supply, and no common source of supply for said district was ever located or established for any irrigation system or system of irrigation works, by the board of directors of said district, nor was any system of irrigation works ever established by the board of directors of said district, and no line of canals with necessary branches and water therefor to irrigate the lands embraced within said district, was ever devised, fixed or determined upon by the coard of directors of said district, or by any other person; and at no time has the board of directors of said district determined upon, located or considered any plan embracing a supply of water to irrigate the lands of said district.

Eleven. That no plans or specifications of or for any system of irrigation or irrigation works, or of canals or water supply were ever made whereby and upon which an estimate could be made by the board of directors of said district, and no estimate was ever made by said board of directors.

Twelve. That the board of directors of said district did not at any time determine that it was necessary or proper that the bonds of said district in the amount of $500,000 or in any other amount be issued by said district, and be sold to raise the money necessary for the purpose of constructing canals and works for the irrigation of the lands of said district, and for the acquisition of the property, water, and water rights necessary therefor.

Thirteen. That at all times since the alleged organization of said district, the defendants herein have been, and now are, severally the owners and in possession of the real estate situate within the boundaries of said district, particularly described in the answer to said petition.

As conclusion of law from the foregoing facts, the court finds:

I. That the said Tulare irrigation district was not duly or
409 regularly organized as an irrigation district, and from the time of its attempted organization to the present time has not

been and is not now, a legal or valid irrigation district; and none of the proceedings for its attempted organization are entitled to approval or confirmation by this court, but the approval and confirmation of all such proceedings are hereby denied, and all such proceedings for the organization of said district are illegal and void.

2. That the proceedings of the board of directors of said district in providing for and authorizing the issue and sale of the bonds of said district to the amount of $500,000 are illegal and void, and are not entitled to the approval and confirmation of the court.

3. That the proceedings, orders and resolution of said board of directors for the issue of the bonds of said district, to the amount of $500,000, and the order prescribing the form of such bonds, and the order of the sale of such bonds to the amount of $200,000 are illegal and void, and not entitled to the approval and confirmation by the court.

4. That the petitioners herein are not entitled to a judgment approving and confirming the proceedings mentioned in their petition; but the defendants herein are entitled to a judgment denying the approval and confirmation of such proceedings, and adjudging and decreeing that the proceedings had for the formation of said irrigation district and all its proceedings had since such formation and organization, including the issue and sale of its bonds are illegal and void.

That judgment be entered accordingly.

WHEATON A. GRAY,
Judge of the Superior Court.

Dated November 23rd, 1898.

410 (Endorsed:) No. 2329. In the superior court of Tulare county, State of California. In the matter of Tulare Irrigation District. Findings. Filed Nov. 23rd, 1898. Wm. H. Hammond, clerk, George L. Bliss, deputy.

In the Superior Court of the State of California in and for the County of Tulare.

In the Matter of Tulare Irrigation District.

This cause came on regularly for hearing by stipulation of the parties hereto and the order of the court before said court on the 17th day of June, 1898, said Board of Directors, petitioner herein, appearing by E. W. Holland, as its attorney, and the defendants B. W. Jauchius, J. L. Gould, George G. Kelly and Ralph Jones appearing herein by their attorneys C. L. Russell and G. E. Zartman; and the cause having been tried on said 17th day of June, 1898, by the court without a jury, and the testimony both oral and documentary, having been heard and the case having been submitted to the court for decision, and the court having made and filed its findings of fact and conclusions of law, and its order for judgment entered, in accordance therewith in favor of said defendants.

Wherefore by reason of the law and the findings and the order aforesaid, it is ordered and adjudged and decreed:

That the said Tulare irrigation district never was and is not now, duly or legally organized by the directions of the board of supervisors of Tulare county, on or about the 2nd day of September, 1889, nor at any other time, and the same is not now a duly or legally organized irrigation district.

That the first board of directors of said irrigation district were not duly or legally elected.

411 That all the proceedings of said board of supervisors under and by virtue of which said irrigation district was organized, and first board of directors of said district was elected are null and void, and approval of the same is hereby denied.

And it is further ordered, adjudged and decreed:

That all the proceedings had by or under the authority and direction of the board of directors of said Tulare Irrigation District, for the purpose of the issuance and sale of the bonds of said district to the amount of $500,000, are null and void, and approval of the same is hereby denied.

And it is further ordered, adjudged and decreed that the said Tulare Irrigation District ever since its attempted organization on or about the 2nd day of September, 1889, as aforesaid, has never been and is not now a legally organized irrigation district; that it has never possessed and does not now possess any power or authority to issue or sell bonds of said district, create indebtedness, or perform any of the functions, franchises or other acts of an irrigation district.

And it is further ordered that petitioners pay the costs herein.

WHEATON A. GRAY,
Judge of the Superior Court.

Dated this November 23rd, 1898.

Entered November 23rd, 1898, in Judgment Book 6, page 57, *et seq.*

WM. H. HAMMOND, *Clerk.*
GEO. L. BLISS, *Deputy.*

(Endorsed:) No. 2329. In the superior court of Tulare county, State of California. In the matter of Tulare Irrigation District. Decree Book 6, p. 57. Filed Nov. 23rd, 1898. Wm. H. Hammond, clerk. Geo. L. Bliss, deputy.

I hereby certify the foregoing to be a full, true and correct
412 copy of the original judgment-roll on file in my office in the above-entitled matter.

In witness whereof, I have hereunto set my hand and affixed the seal of the above-named court, this 14 day of Oct. 1899.

[Seal of the Superior Court of Tulare County.]

JOHN CUTLER, JR., *Clerk,*
By —— ——, *Deputy.*

(Cancelled stamp 10 cents.)

And to said offer of said judgment roll, the plaintiff objected and objected to each and all the papers purporting to be made or filed in the confirmation proceedings, which were or purported to have been made, subsequent in date to the date of the judgment in said proceedings offered by plaintiff, not only on the ground that such subsequent papers and each of them, are irrelevant, incompetent and immaterial, but because there was no proof or offer to prove any action, proceedings or judgment, setting aside or vacating or annulling the judgment in such confirmation proceedings, so offered in evidence by said plaintiff; and also, because it appears that even after the certified copy of the judgment-roll introduced in evidence by the plaintiff, six or seven years after bonds were sold in the year 1898, eight years after the original decree had been filed, and after the bonds were sold, as far as appears here, some tax-payers, alleged tax-payers, filed an answer in that same suit and obtained judgment in that proceeding then in the absence of any one except themselves on the one side, and the then directors on the other. And plaintiff objected that you cannot in that way make and unmake judgments. Which objections of the plaintiff the court sus-
413 tained, and excluded said judgment-roll, and to such ruling the defendant and intervenors each and severally, and respectively, then and there duly excepted. (Exception No. 12.)

That thereupon, the defendant and intervenors offered in evidence the following facts, which appear from the bond register of the defendant district, which was admitted by counsel for the plaintiff to be such bond register, to wit: That bonds numbered 301 to 313 inclusive, were sold June 14th, 1892; that bonds numbered 314 and 315 were sold June 7th, 1892; that bonds numbered 342 down to and including bond numbered 356 were sold June 3rd, 1891; that bonds numbered 389 to 396 inclusive were sold June 18th, 1891; that bonds numbered 398 down to and including bond number 418 were sold March 15th, 1892; that bonds numbered 427 to 430 inclusive, were sold April 8th, 1892; that bonds numbered 432 down to and including 452 were sold April 8th, 1892; that bonds numbered 455 to 464 inclusive, were sold April 8th, 1892; that bond numbered 478 was sold April 8th, 1892; that bond numbered 479 was sold April 8th, 1892; that the following bonds were sold April 8th, 1892, to wit: numbers 490 to 492 inclusive, number 548, number 562, numbers 578 to 579 inclusive; bond numbered 583; bonds numbered 588 to 603 inclusive; bonds numbered 607 and 608; bond numbered 616; bonds numbered 625 to 628 inclusive; bonds numbered 634 to 690 inclusive; bonds numbered 180 to 183 inclusive; bonds numbered 719 to 725 inclusive; bond numbered 728; bonds numbered 734 to 735 inclusive; bonds numbered 746 to 749 inclusive; that bonds numbered 759 down to and including 784 were sold April 9th, 1892; that bonds numbered 785 down to and including 813, were sold April 23rd, 1892; that bonds numbered 814 to 840, both inclusive, were sold May 3rd, 1892; that bonds numbered 841 down to and including 916, were sold on May 14th, 1892; that bonds numbered 934 down to and including 943 were sold June 13th,

1892; that bonds numbered 948 to 952 inclusive, were sold
414 June 13th, 1892; that bond numbered 955 was sold June 13th, 1892; that bonds numbered 961 and 962 were sold July 18th, 1892; that bonds numbered 978 down to and including 991 were sold July 18th, 1892, and that bonds numbered 992 to 1,000, inclusive, were sold January 30th, 1893.

That to the introduction of said evidence and said offer to introduce the same, and to each of the entries in the bond register of the defendant, as offered in evidence by the defendant and intervenors, the plaintiff objected, not only on the ground that the same is immaterial, irrelevant and incompetent, but because the whole of each of said entries was not offered and part of an entry is not admissible, disconnected from the rest of such entry. And thereupon, the court sustained said objection and excluded said evidence, and to said ruling of the court, the defendant and intervenors each and severally and respectively, then and there duly excepted. (Exception No. 13.)

And thereupon, it was admitted by counsel for the plaintiff, that the minute book hereafter referred to and read from, was the minute book of the board of directors of the defendant district.

Thereupon the defendant and intervenors offered from said minute minute book, the following entries, to wit: An entry appearing at page 27, as a part of the proceedings held by said board of directors, on the — day of —— 189–, in the words and figures following, to wit:

"It was moved by Director Gibson and seconded by Director Cartmill, that it is the sense of the board of directors of Tulare irrigation district, that an election be called in the district, to submit the proposition of bonds being issued to the amount of five hundred thousand dollars, for the purpose of constructing necessary canals, ditches, etc., and for purchasing water rights and for the distribution of water throughout the district.

415 The motion was carried by the following vote: Ayes' Directors Gibson, Merritt, and Cartmill; noes, Director De Witt."

Also, the following entry at pages 67 of said minute book, constituting a part of the proceedings of said board of directors had at a meeting held on the — day of —— 189–, in the words and figures following, to wit:

"Therefore, resolved, That it is the intention of this board, to sell the bonds of Tulare irrigation district to the said amount of two hundred thousand dollars on the 29th day of December, 1890, at the hour of one o'clock p. m., at the office of this board, in the city of Tulare; it is hereby ordered that this resolution be entered in the minutes of the board, and that notice of such sale and that sealed proposals for the purchase of said bonds will be received by said board at its office in said city of Tulare till the day and hour in the resolution above named, be published at least twenty days before said day, in the following daily newspapers: The Dail- Journal of Commerce, published in the city of San Francisco; the

Evening Bee, published in the city of Sacramento; and the Evening Express, published in the city of Los Angeles."

Also, the following entry appearing at pages 76 and 77, in said minute book, constituting a part of the proceedings of said board had at a meeting held on the — day of —— 189– in the words and figures following to wit:

"In the matter of proposals for the purchase of bonds: The hour of one o'clock p. m. having arrived, and that being the hour and this being the place fixed by this board by its resolution of December 2nd, 1890, for the sale of the bonds of this district, to the amount of two hundred thousand, and it appearing to the satisfaction of the board that due notice had been given in accordance with the law and the order of this board, by publication thereof for at
416 least twenty days, in the Daily Journal of Commerce, a daily newspaper published in the city of San Francisco, the Evening Bee, a daily newspaper published in the city of Sacramento, and the Evening Express, a daily newspaper published in the city of Los Angeles. It was ordered that the secretary be and he was instructed to open the proposals on file for the purchase of the bonds of the district; and whereas, among the sealed proposals so received, was that of J. Goldman & Co., for the purchase of said bonds to the amount of fifty thousand dollars, of the par or face value of said bonds, at the rate of ninety per cent. of the par or face value thereof; and the said board having examined and considered the same, and it appearing that said proposal of J. Goldman & Co., is the highest and best bid for said bonds, and that said J. Goldman & Co., are responsible bidders therefor;

Now, therefore, it is by the said board,

Resolved That the said bid of the said J. Goldman & Co., for the purchase of (fifty thousand dollars) of the par or face value of said bonds, at the rate of ninety per cent. of the par or face value of said bonds, be and the same is hereby accepted, and that the purchase of the same is hereby awarded to them. That said bonds numbered 201 to 300 both inclusive, be signed by the president and secretary. And that the secretary do affix the seal of said board thereto. That said bonds be delivered to the said J. Goldman & Co., or to their order, at their request upon their payment therefor, at the rate aforesaid.

That the coupon which shall have matured at the time of the delivering of said bonds, be, before the delivery of said bonds, detached and canceled by the secretary of this board, and that all additional accrued interest be adjusted at the time of the delivery of said bonds by removal and cancellation of a sufficient number of the then next maturing interest coupons, to represent the amount so accrued.

417 It was further ordered that the consideration and action upon the remaining sealed proposals for the purchase of bonds, be postponed to the next regular meeting of this board.

The secretary was ordered to telegraph Coffin and Stanton on the non-acceptance of their bid, and to write them stating the reasons why."

Also, the following entry at page 79 of said minute book, constituting a part of the proceedings of said board, at a meeting held on the — day of —— 189–, in the words and figures following, to wit:

"On motion, it was ordered that action on the bids for bonds of the district, be postponed until the adjourned regular meeting of this board."

Also, the following entry appearing at pages 85, 86 and 87, of said minute book, constituting a part of the proceedings of said board, at a meeting held on the — day of —— 189– in the words and figures following, to wit:

The following resolution was introduced by Director Cartmill, and after discussion was adopted by the unanimous vote of the board:

"Whereas, this board by virtue of a resolution, duly adopted by the board at *v* a regular meeting thereof, held on the 2nd day of September, 1890, declared its intention to sell the bonds of this district to the amount of two hundred thousand dollars of the par or face value of the bonds, and by said resolution declared and fixed the 29th day of December, 1890, at the hour of one o'clock p. m., of said day, and the office of said board, in the city of Tulare, as the time and place for the sale of said bonds, and whereas, on said 29th day of December, 1890, and prior to the hour aforesaid, the said board received the said proposals of W. A. Ray for the purchase of said bonds, to the amount of one hundred and fifty thousand
418 dollars, of the par or face value of said bonds, at the rate of ninety per cent. of the par or face value thereof, and the interest accrued thereon, and the said board having examined the same, and the further consideration thereof having been continued to the 6th day of January, 1891, at the regular meeting of said board, and having again on said last-named day, been again continued to the adjourned session of said regular meeting on the 17th day of January, 1891. And the said board having duly considered said sealed proposal, and it appearing that the same is the highest and best bid for said bonds, and that said W. A. Ray is a responsible bidder; therefore, it is by said board

Resolved, That the said bid of said W. A. Ray for the purchase of one hundred and fifty thousand dollars, of the par or face value of said bonds, at the rate of ninety per cent. of the par or face value of said bonds, and the interest accrued thereon, be and the same is hereby accepted by this board, and that the purchase of the same at the rate aforesaid, be and the same is hereby awarded to him. That said bonds, or any number thereof, duly signed by the president and secretary of this board, and attested with its seal, be delivered to said W. A. Ray, at his request and upon his payment therefor, at the rate aforesaid. That said board, with the consent of W. A. Ray, now given to said board, reserves the right to rescind the foregoing award of purchase and acceptance of said bid, so far as the same relates to any of the said bonds which shall not, at the time of such re-cission have been delivered to the said W. A. Ray, and the purchase price received therefor. That the coupons which shall have matured at the time of the delivery of any of said bonds

be detached before the delivery of said bonds, and that said coupons shall be cancelled.

Upon request of said W. A. Ray, in writing, it was unanimously ordered that the president and secretary forward at once
419 to the Anglo-California Bank of San Francisco, California, out of the bonds this day sold to said W. A. Ray, bonds to the amount of twenty thousand dollars, par or face value, with instructions to said bank to deliver the same to I. R. Wilbur, or to his order, upon the payment to said bank for the said Tulare irrigation district, of the purchase price therefor, to wit: ninety per cent. of the par or face value of said bonds, and the interest accrued thereon, since the 1st day of January, 1891. This order being made upon the express condition, that said W. A. Ray shall not be held responsible for any loss or injury occurring to any of said bonds in carrying out the order, and that he shall not be liable for any costs or expense attending the same."

To which said offer plaintiff objected on the ground that said evidence was immaterial, irrelevant and incompetent, and the court sustained such objection, to which ruling, the defendant and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 14.)

The foregoing contains and comprises all the testimony and evidence offered or admitted on the trial of this action, and no other evidence was offered or admitted. The cause was thereupon argued and submitted to the court for consideration and decision.

Thereafter, on the 25th day of March, 1901, the court announced its decision in this cause, in favor of the plaintiff and against the defendant and intervenors, and ordered that judgment be entered for plaintiff, and plaintiff's attorney prepare and submit to the court, findings in accordance with the conclusions of the court; to which decision the defendant and intervenors each and severally and respectively, then and there duly excepted. (Exception No. 15.)

And thereafter, on the 30th day of March, 1901, the court made and filed herein its findings, in the words and figures following:

420 "In the Circuit Court of the United States, in the Ninth Circuit, in and for the Southern District of California.

ALBERT SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, a Corporation, Defendant. } No. 859.

This cause came on regularly for trial before the court, sitting without a jury, upon the issues joined herein, the plaintiff and intervenors herein, having by stipulation in writing signed by them and filed herein, stipulated that the allegations of the complaint in intervention herein should be deemed to be denied, and a jury having been expressly waived by a stipulation in writing, filed herein, before the trial of this action, signed by the plaintiff and the defendant and the intervenors herein, the said cause was tried by the court upon the issues joined herein and argued and submitted to the court for decision. And the court being fully advised, finds for the plain-

tiff on all the issues joined herein and assesses the damages of plaintiff at the sum of thirteen thousand one hundred and eighty-five dollars, and finds that he is entitled to judgment against the Tulare Irrigation District, for the said sum, and hereby orders that judgment be entered herein, that plaintiff have and recover of and from said Tulare Irrigation District, the said sum of thirteen thousand one hundred and eighty-five dollars.

Dated March 30th, A. D. 1901.

OLIN WELLBORN,
United States District Judge.

(Endorsed:) United States circuit court, ninth circuit, southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, a corporation, defendant. Findings. Filed
421 March 30th, 1901. Wm. Van Dyke, clerk."

That thereupon, the defendant and intervenors duly excepted to the making of said findings. (Exception No. 16.)

Thereafter, in due time, defendant and intervenors moved the court for a new trial of said cause, upon the following grounds:

1. Insufficiency of the evidence to justify the findings and decision herein.

2. Errors in law occurring at the trial and excepted to by said defendant and intervenors.

Stating in said motion that said motion would be made on the minutes of the court and the pleadings and the proceedings on file in the clerk's office, and that on said grounds, minutes, pleadings and proceedings, the said defendant and intervenors moved the court to set aside and vacate the decision and findings hereinbefore made, and to grant a new trial of this action. And pending said motion, defendant and intervenors duly moved the court to set aside and vacate the said findings and to make and enter findings in favor of the defendant, on the ground that there was no evidence whatever, to justify the findings aforesaid, in favor of the plaintiff, and that on all the evidence in the case, findings should be made in favor of the defendant and intervenors.

Thereupon, the court denied said motion, to which ruling the defendant and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 17.)

The above is presented as the bill of exceptions on behalf of the defendant and intervenors.

Dated April 19th, 1901.

C. L. RUSSELL,
G. W. ZARTMAN,
R. M. F. SOTO,
GEORGE MAXWELL,
By JOHN GARBER,
JOHN GARBER,
Attorneys for Defendant.

422 C. L. RUSSELL AND
G. W. ZARTMAN,
By JOHN GARBER,
Attorneys for Intervenors.

The foregoing is hereby allowed, settled, and approved, as defendant and intervenors' bill of exceptions in the above-entitled action. Exceptions therein noted were taken in all respects as provided by law, and the rules of this court.

Time for presenting and filing the foregoing bill of exceptions was duly extended and continued by the written stipulation of plaintiff's attorneys and by the orders of court, duly entered, to the present day.

Dated April 25th, 1901.

OLIN WELLBORN, *Judge.*

Service by copy of the foregoing bill of exceptions is hereby admitted this 19th day of April, 1901, within the time granted and allowed by our written stipulations and orders of court.

Dated April 19, 1901.

S. F. LEIB,
Attorney for Plaintiff.

Time for presentation of amendments to the foregoing bill of exceptions is hereby waived, and said bill of exceptions may be presented to the judge of the circuit court, who tried said cause, for allowance and settlement, this — day of ——, 1901, and may be signed as presented.

S. F. LEIB,
Attorney for Plaintiff.

(Endorsed:) No. 8590. U. S. circuit court southern district of California. Alfred Shepard plaintiff *vs.* Tulare Irrigation District defendant. George G. Kelly *et al.*, intervenors. Bill of exceptions. Filed Apr. 25 1901 Wm. M. Van Dyke clerk. —— ——, deputy.

423 Charles Sleeper, Esq., Tulare, June 23d*h*, 1900.

DEAR SIR: I received your letter of yesterday telling me that my proposition was accepted and that you would send $1,000.00 to the Bank of Tular- to my credit provide*t* the deed in escrow is accepted.

As to m*i* being married, I have to state that I am not nor ever was, in any way. I name Mr. G. Garibaldi of Merced my executor to act in my place if anything should happen to me. I received a letter from Mr. McNamara ap-rising me that Mr. Treadwell offered to me the same amount in cash for my interest in the Queirolo claim, of course I hold myself bound to you so far.

Yours truly, BENNO W. JAUCHIUS.

424 In the Superior Court of the County of Tulare, State of California. Probate.

In the Matter of the Estate of BENNO W. JAUCHIUS, Deceased.

Letters testamentary, C. C. P., sec. 1360.

STATE OF CALIFORNIA, } ss:
County of Tulare, }

The last will of Benno W. Jauchius, deceased, a copy of which is hereto annexed, having been proved and recorded in the superior court of the county of Tulare, State of California, G. Garibaldi who is named herein as such, is hereby appointed executor.

Witness John Cutler, Jr., clerk of the superior court of the county of Tulare, with the seal of the court affixed, the 31st day of December, A. D. 1900.

By order of the court.

[SEAL.] JOHN CUTLER, JR., *Clerk*,
By H. B. McCLURE,
Deputy Clerk.

STATE OF CALIFORNIA, } ss:
County of Tulare, }

I do solemnly swear that I will support the Constitution of the United States, and the constitution of the State of California, and that I will faithfully perform, according to law, the duties of executor of the last will and testament of Benno W. Jauchius deceased.

G. GARIBALDI.

425 Subscribed and sworn to before me this 31st day of December, 1900.

[SEAL.] JOHN CUTLER, JR., *Clerk*,
By H. B. McCLURE,
Deputy Clerk.

Read instructions on the back of these letters.

Instructions to Executors.

1st. Upon the receipt of letters, take into your possession immediately all the estate of decedent, real and personal, and collect all debts due to the decedent or to the estate. C. C. P. 1581.

2nd. Make and return to the court, as soon as practicable, a true inventory and appraisement of all the estate, including the homestead, if any, which has come to your possession or knowledge. C. C. P. 1443.

3rd. Make immediate application to the court for an order of publication of notice to the creditors of the estate to present their claims. C. C. P. 1490.

4th. Upon the expiration of the time for publication of notice to creditors, file a copy thereof, with the affidavit of the printer, showing due publication. C. C. P. 1492.

5th. Pay no claim until the same has been properly presented, allowed, approved, filed and ordered paid by the court. (C. C. P. 1494–'6.) Pay no amount however small without taking a receipt in writing.

6th. Sell no property, real or personal, of decedent without an order of court. C. C. P. 1517.

7th. Within thirty days after the expiration of the time mentioned in the notice to creditors, within which claims must be presented, render a full account and report of your administration to the court, and file therewith vouchers for all charges, debts, claims and expenses which you have paid. C. C. P. 1628, 1631.

426 8th. Upon the settlement of your account, obtain an order of the court for the payment of the debts which have been allowed. C. C. P. 1647.

9th. All costs incurred by reason of your neglect to comply with your duty, and in enforcing such compliance, will be charged to you, and not to the estate.

10th. In case of doubt as to how you should act, apply to your attorney or the court for advice and instructions.

STATE OF CALIFORNIA, } *ss:*
County of Tulare, }

I, John Cutler, Jr., county clerk of the said county of Tulare, State of California, and *ex officio* clerk of the superior court in and for said Tulare county, hereby certify the within and foregoing to be a full, true and correct copy of letters testamentary issued in the therein-entitled matter, as the same remains of record and on file in the office of said clerk. I further certify that said letters have not been revoked.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 21st day of December, A. D., 1901.

[SEAL.] JOHN CUTLER, JR., *Clerk.*

(Endorsed:) No. 1105. Recorded M. B. C. page 115. Superior court, county of Tulare, department No. —. In the matter of the estate of Benno W. Jauchius, deceased. Letters testamentary.

(Endorsed:) Filed Dec. 31st, 1900. John Cutler, Jr., clerk. By H. B. McClure, deputy clerk, J. W. Knox, attorney for executor. Merced.

No. 859. U. S. circuit court, ninth circuit, southern district of California. Alfred Shepard *vs.* Tulare Irrigation District *et al.*, Certified copy of will of B. W. Jauchius, & of letters testamentary. Filed Dec. 23 1901 Wm. M. Van Dyke, clerk, Chas. N. Williams, deputy.

427 MERCED, CAL., *December* 21*st*, 1901.

Messrs. Russell and Zartman, attorneys-at-law, are hereby authorized to have G. Garibaldi as executor of the will of B. W. Jauchius, deceased, substituted as intervenor in the case of Spehard *vs.* Tulare Irrigation District defendant, and G. G. Kelly and B. W.

Jauchius intervenors in place and stead of said B. W. Jauchius intervenor, deceased, and are further authorized to join the name of said G. Garibaldi, as such executor, with the defendant and said other intervenor in suing out a writ of error to the Supreme Court of the United States in said action, and to appear as attorneys for said executor in said proceeding under the original agreement entered into by B. W. Jauchius, deceased, and on the same terms and conditions as provided in said original agreement as to compensation; and are further authorized to sign the name of G. Garibaldi as said executor to the cost bond, as one of the principals on said writ of error proceeding; and are further authorized to state to the Federal court, that we consent to an order substituting said G. Garibaldi, as such executor, as an intervenor in place and stead of said B. W. Jauchius.

G. GARIBALDI,
As Executor of the Will of B. W. Jauchius, Deceased.

J. W. KNOX,
As Attorney for G. Garibaldi,
Executor of the Will of W. B. *Jauchius, Deceased.*

(Endorsed:) No. 859. U. S. circuit court, ninth circuit, southern district of California. Alfred Shepard, plaintiff, *v.* Tulare Irrigation District, defendant, George G. Kelly *et al.*, intervenors. Consent of executor of will of B. W. Jauchius to substitute and to join as plaintiff in error. Filed Dec. 23 1901 Wm. M. Van Dyke, clerk Chas N. Williams, deputy.

428 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant.

Petition for Writ of Error.

Tulare Irrigation District, defendant in the above-entitled action, and George G. Kelly, intervenor in said action, and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, the other intervenor in said action respectfully show:

That on the 30th day of March, 1901, said court rendered judgment in favor of the plaintiff in said action and against said defendant and intervenors George G. Kelly and B. W. Jauchius, whereby it was adjudged that said plaintiff recover from the defendant the sum of $13,185; that thereafter said B. W. Jauchius died leaving a last will in which said G. Garibaldi was named as executor; that thereafter said will was admitted to probate by the superior court of the county of Tulare, State of California, and letters testamentary were issued to said G. Garibaldi; that said G. Garibaldi has filed in this court a certified copy of said letters testamentary.

That in the above-entitled action the claim was made by said de-

fendant and said intervenors that certain statutes of the State of California were in contravention of the Constitution of the United States, and said parties set up claims of rights alleged by them to be protected by said Constitution, and alleged various acts upon which plaintiff's cause of action rested to be in violation of said Constitution; that the above-entitled cause involves the
429 construction and application of said Constitution.

And said defendant, Tulare Irrigation District, and said intervenor, George G. Kelly, and said G. Garibaldi, executor of the last will of said intervenor B. W. Jauchius, deceased, feeling aggrieved by the judgment of the court entered in said cause as aforesaid,

Now come, by their attorneys, and petition said court for an order allowing said defendant and said intervenor, George G. Kelly and said G. Garibaldi, executor of the last will of said intervenor B. W. Jauchius, deceased, to prosecute a writ of error to the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided; and also, that an order be made fixing the amount of security for costs with said defendant, and said intervenor, George G. Kelly, and said G. Garibaldi, executor of the last will of said intervenor B. W. Jauchius, deceased, shall give and furnish upon said writ of error.

Wherefore, petitioners pray that they be allowed to prosecute a writ of error to said, the honorable Supreme Court of the United States; to the end that the said judgment may be reversed which they hereby pray may be accordingly done.

Dated, December 23rd, 1901.

JOHN GARBER,
G. W. ZARTMAN.
C. L. RUSSELL,
GEORGE H. MAXWELL,
R. M. F. SOTO,
Attorneys for Defendant, Tulare Irrigation District.

G. W. ZARTMAN,
C. L. RUSSELL,
JOHN GARBER,
Attorneys for Intervenor George G. Kelly and G. Garibaldi, Executor of the Last Will of Intervenor B. W. Jauchius, Deceased.

430 (Endorsed:) No. 859. In the circuit court of United States, ninth circuit, in and for the southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, defendant. Petition for writ of error. Filed Dec. 23 1901 Wm. M. Van Dyke, clerk Chas. N. Williams, deputy

431 In the Supreme Court of the United States.

TULARE IRRIGATION DISTRICT, GEORGE G. KELLY, and G. GARIBALDI, Executor of the Last Will of B. W. Jauchius, Deceased, Plaintiffs in Error,

vs.

ALFRED SHEPARD, Defendant in Error.

Assignment of Errors.

Now come Tulare Irrigation District and George G. Kelly and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, the plaintiffs in error herein, by their attorneys, and assign and specify the following as errors upon which they will rely, and which they will urge in their writ of error in the above-entitled cause.

I.

The court erred in overruling and not sustaining so much of the demurrer interposed by the defendant to the complaint, on the ground that said complaint does not state facts sufficient to constitute a cause of action.

II.

The court erred in holding and deciding that the said complaint is sufficient in law to support the judgment herein.

III.

The court erred in admitting in evidence the first twelve (12) paragraphs of the stipulation made by the parties hereto, as to the truth of certain facts, filed in said action on the 29th day of March, A. D. 1900, which twelve paragraphs, in substance,
432 severally admit the following facts to be true.

1st paragraph.

That plaintiff is and for ten years has been a citizen and resident of the State of Michigan, and that David Shepard and F. G. Shepard for ten years have also been residents and citizens of the said State of Michigan.

2nd paragraph.

That under the provisions of the act of the legislature of the State of California, entitled: "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property and for the distribution of water for irrigation purposes," approved March 7th, 1887, an effort was made in the county of Tulare, State of California, to form an irrigation district, and such proceedings in that behalf were had that what purported to be a certified copy of the order of said board of supervisors, was duly filed with the county recorder of said county on the 14th day of September, A. D. 1889, a certified copy

of which certified copy is annexed to said stipulation, marked "A," which is an order made by the board of supervisors of the county of Tulare, and entered upon its minutes of the 2nd day of September, 1889, setting forth the result of an election held on the 24th day of August, 1889, within the proposed boundaries of said Tulare irrigation district, to vote on the question whether or not said district should be organized, designating the persons elected to the various offices prescribed by said act of the legislature, of March 7th, 1887, and declaring said district organized, under the name of "Tulare Irrigation District."

That the persons declared by said order of the board of supervisors to have been elected as officers of said district, immediately thereafter purported to organize as such officers and thereupon entered upon their duties as such officers the same as if said district had been legally organized, and as if there had been legally
433 elected such officers, and that they and their successors in office have ever since continued to act as such officers, and to maintain the name of "Tulare Irrigation District," and in its name have caused the defendant to act as if it was in every respect legally organized as an irrigation district, under said act of the legislature, and in that behalf has at all such times had the name of Tulare Irrigation District printed upon a sign above the door, in front of an office in which the archives and papers of said defendant are kept; and its board of directors have met from time to time in such room, from the time of such purported organization thereof until the present time, weekly, and sometimes oftener, averaging twice a month.

And in the years 1891, 1892 and 1893, its board of directors purported to issue bonds of such Tulare irrigation district in the sum of $500,000, being 1000 bonds of the face value of $500 each, as hereinafter stated, and levied assessments on the property claimed to be embraced in said district, purporting to act in so doing under the said act of the legislature, and previous to July 1st, 1896, it assessed, levied and collected taxes upon the lands claimed to be in such district of over $100,000, and paid the same out as interest upon such bonds; that it has engaged in litigation as plaintiff in — suits, — of them before the issuance of said bonds, and therein alleged that it was a corporation under the provisions of the said act of the legislature, and from said time of its said purported organization until the present time, whatever it has done and performed, it has done and performed in the same manner as if it had been legally organized as such district in full compliance with the law, and so continued to act and hold itself out as such corporation organized under said law.

3rd paragraph.

That the lands embraced in the limits of said district are and always have been in the said county of Tulare.

434 4th paragraph.

That after certain proceedings had been had by the board of directors of said defendant, the said defendant called a special election of the electors of said district, at which should be submitted the question whether or not bonds of said district should be issued to the amount of $500,000; that such an election was held on June 7th, 1899; that the same was carried; and that on or about July 1st, 1890, the board of directors of said district ordered that bonds of said district in the sum of $500,000 be issued, divided into 1000 bonds of $500 each, numbered consecutively from one to one thousand.

5th paragraph.

That thereupon the said board of directors caused 1000 bonds of said district to be printed, and each of them, together with the coupons thereto attached, were in the form as alleged in the complaint herein, a copy of one of which bonds, numbered 400, is annexed to the complaint marked "Exhibit A."

6th paragraph.

That said bonds were all disposed of by the said board of directors during the years 1891, 1892 and 1893.

7th paragraph.

That as a result of the disposal of said bonds the defendant was enabled to and did build and construct an irrigation system, whereby it irrigated lands within the district, but not the whole thereof at any time.

8th paragraph.

That the interest coupons of each of said bonds were promptly paid every six months until July 1st, 1896.

9th paragraph.

That no one ever brought an action to prevent the issuance of any of said bonds.

10th paragraph.

That no suit or action was ever brought to annul or cancel
435 or have declared void any of said bonds until after the year 1896, nor was any suit or action ever brought until after the year 1895 wherein the validity of any of said bonds was in anyway questioned, nor until after the year 1896, wherein the validity of any of said bonds 342 to 386 inclusive were in any way questioned except as to the constitutionality of the said act of the said legislature of March 7th, 1887, which action involving such constitutionality of such law was brought in November, A. D., 1895.

11th paragraph.

That the plaintiff, at the commencement of this action, was the holder of the coupons in the complaint alleged to be held and owned by him, and on which this action was brought.

12th paragraph.

That the plaintiff became the holder of the coupons on which this action is brought, some by purchase directly and others by mesne conveyance, in good faith, for the full value thereof, in the usual course of business, without any actual notice or knowledge of any defect, infirmity or invalidity of the bonds, or of any of them, to which said coupons, or any thereof, were attached, and without any actual notice or knowledge of the non-performance or non-observance of any requirements of the law necessary to their validity, and so became the holder thereof under the full belief that all the requirements of the law necessary to their validity had been performed and observed and complied with.

IV.

Error in admitting in evidence a certified copy of the judgment-roll in the matter of the Tulare Irrigation District. Said judgment-roll is composed of documents in substance as follows:

(1.) A petition by the board of directors of Tulare irrigation
436 district to the superior court of Tulare county, setting forth the various proceedings which had been taken with a view to the organization of the Tulare irrigation district and the issuance of bonds by said district, and praying that said proceedings be judicially examined, approved and confirmed by the court.

(2.) An order by the superior court of Tulare county reciting the filing of the above-mentioned petition and ordering said petition set down for hearing and the giving of notice of the filing of said petition by publication and posting.

(3.) An affidavit of one Miles Ellsworth, showing the publication in the Weekly Tulare Register of the notice of the hearing of said petition.

(4.) An affidavit of one Edward Oakford, secretary of the board of directors of Tulare irrigation district, showing the posting of the notices of the hearing of said petition in the various precincts of said district.

(5.) The findings of fact and conclusions of law of said superior court in said confirmation proceedings, filed September 15, 1890. Said findings of fact set forth the taking of the various steps looking to the formation of the district, the election of officers and the issuance of bonds thereof, and the conclusions of law are to the effect that said district was regularly organized, and ever since its organization has been and still is a legal and valid irrigation district, and that all the proceedings for its organization are entitled to approval and confirmation; that the proceedings of the board of directors of said district providing for and authorizing the sale of the bonds of said district are legal and valid and entitled to approval and confirmation; and that the proceedings, orders and resolutions of said board for the issue of the bonds of said district and the order prescribing the form of such bonds, and the order for the sale of such bonds, are legal and valid and entitled to ap-

proval and confirmation, and that said board of directors is
437 entitled to a judgment confirming all the proceedings mentioned in said petition.

(6.) The judgment of said court in said confirmation proceeding, dated September 15, 1890, ordering, adjudging and decreeing the proceedings leading up to the organization of said district, and the proceedings leading up to the issue of the bonds of said district, to be legal and valid, and that said district is a legal and valid irrigation district, having power to issue and sell the bonds of said district to the amount of $500,000, and that the bonds issued by said district are legal and valid and in proper form.

V.

The court erred in sustaining the objection of plaintiff to the admission in evidence of the 13th paragraph of said stipulation and the facts therein set forth, and to the admission in evidence of Exhibit B therein referred to, and in refusing to admit and excluding said 13th paragraph and the facts stated therein and said Exhibit B, all of which were offered in evidence by the defendant and intervenors. Said 13th paragraph is in words and figures as follows:

"That a petition, a copy of which is hereunto annexed marked 'Exhibit B,' was on the 1st day of July, 1889, filed with and presented to the board of supervisors of Tulare county at a regular meeting of said board, and no other petition for the organization of Tulare irrigation district has ever been presented to or filed with said board of supervisors which said petition was printed and published for two weeks during the month of June, 1889, in a newspaper printed and published in said Tulare county, to wit: The Weekly Tulare Register."

Said Exhibit B is a copy of a petition presented to the board of supervisors of Tulare county by parties whose names are signed to said petition and claiming to be freeholders owning land within the proposed district; in said petition it is stated that the petitioners
desire to provide for the irrigation of the land within the
438 proposed district, all of which is susceptible to one mode of irrigation by conveying the waters of Kaweah river to said land; petitioners pray that the district described in the petition be organized as an irrigation district under the act of March 7, 1887 (the Wright act), and the petition contains a description by metes and bounds of the boundaries of the proposed district.

VI.

Error in sustaining the objection of plaintiff to the admission in evidence of the 14th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit C therein referred to, and in refusing to admit and excluding said 14th paragraph and the facts stated therein and said Exhibit C, all of which were offered in evidence by said defendant and intervenors. Said paragraph 14 is in words and figures as follows, to wit:

"That during the time said petition was printed and published in said newspaper, and immediately following and below said peti-

tion, as published, and in the same column of the paper, was printed a notice, a copy of which notice is hereunto annexed and marked 'Exhibit C,' and no other notice of the hearing of said or any petition for the organization of Tulare irrigation district, was ever given or published. Said notice was in the same type as said petition in said publication, and enclosed therewith, between two blank lines across the column, the first at the head of such petition, and the last at the end of such notice."

Said Exhibit C is in words and figures as follows:

"*Notice.*

"Pursuant to the statutes in such cases made and provided, notice is hereby given that the above and foregoing petition will be presented to the board of supervisors in and for the county of Tulare, at their first regular meeting, in the month of July, 1889, to wit:
on Monday, the 1st day of July, 1889, at which time any
439 person or persons desiring so to do, may present their objections, if any they have, why said petition should not be granted."

VII.

Error in sustaining the objection of plaintiff to the admission in evidence of the 15th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit D therein referred to, and in refusing to admit and excluding said 15th paragraph and the facts stated therein and said Exhibit D, all of which were offered in evidence by said defendant and intervenors. Said 15th paragraph is in words and figures as follows, to wit:

"That at the time of the presentation of said petition, the said board of supervisors caused to be entered on the minutes of said board, the order set forth in paragraph VIII of page 17 of the defendant's answer herein, and on July 6th, 1889, said board caused to be entered on its said minutes, an order, a copy of which is alleged in said paragraph VIII to have been entered by said board on that date, and thereafter, on July 11th, 1889, said board caused to be entered on its minutes the order hereunto annexed, marked 'Exhibit D.'"

Said order referred to in said 15th paragraph as appearing on page 17 of the defendant's answer, is an order entered on the minutes of the board of supervisors of Tulare county on July 1, 1889, and is to the effect that a petition praying for the formation of an irrigation district to be known as the Tulare irrigation district having been filed and presented to the board, and the necessary bond having been filed with said petition and it satisfactorily appearing to the board that due notice of the presentation of said petition has been given as required by law, and certain persons having appeared and asked to have their lands excluded from the district, thereupon the board ordered that the
hearing of the said petition be set for Saturday, July 6, 1889,
440 at 10 a. m. Said order referred to as entered on July 6th, is an order stating that the board occupied the day in hearing testimony to have lands excluded from said district.

Said Exhibit D referred to in said 15th paragraph is a copy of an order of the board of supervisors of Tulare county made after the hearing of the petition for the formation of the Tulare irrigation district. Said order recites the proceedings taken in connection with the petition, including the publication of the notice of the hearing thereof and the fact that certain parties had been heard upon the question whether their lands should be excluded from the district. Said order then proceeds to declare and establish the boundaries of the proposed irrigation district and describes them by metes and bounds, with a specific description of certain lands excepted and taken out of the proposed district as thus described. The order further provides for the division of the proposed district into five divisions, and describes the boundaries of each division. It further orders an election for the purpose of determining whether the proposed district shall be organized, and names the time and the various polling places. The order further provides for notice of such election and names the offices of the proposed district which are to be filled by officers to be voted for at said election, and concludes by describing five election precincts.

VIII.

Error in sustaining plaintiff's objection to the admission in evidence of paragraph 16th of said stipulation and the facts therein set forth, and to the admission of Exhibit E therein referred to, and in refusing to admit and excluding said 16th paragraph and the facts stated therein and said Exhibit E, all of which were offered in evidence by said defendant and intervenors. Said paragraph 16 is in words and figures as follows, to wit:

441 "That on the 2nd day of September, 1889, the clerk of said board of supervisors entered upon their minutes an order purporting to have been passed by said board, a true copy of which order in full, is hereunto annexed, and marked "Exhibit E."

Said Exhibit E referred to in said 16th paragraph is a copy of an order of the board of supervisors of Tulare county, by which said board of supervisors declare the result of their canvass of the election held for the purpose of voting for and against the organization of the Tulare irrigation district and officers thereof. In this order the supervisors make a statement of the votes cast for and against the organization of the district, showing the result to be in favor of organizing the district and a further statement of the number of votes cast for the various officers of the district. The order then declares the territory embraced within certain limits, which are specifically described by metes and bounds, to be an irrigation district, duly organized under the name and style of Tulare irrigation district, and further declares the election of certain named parties as officers of the district.

IX.

Error in sustaining the objection of plaintiff to the admission in evidence of the 17th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 17th

paragraph and the facts stated therein, all of which were offered in evidence by said defendant and intervenors. Said 17th paragraph is in words and figures as follows, to wit;

"That said petition so presented July 1st, 1889, was not copied or set out at length in the minutes of the said board of supervisors, nor in any way referred to or identified than as appears in the orders of said board hereinbefore set forth and hereto annexed."

X.

Error in sustaining objection of plaintiff to the admission
442 in evidence of the 18th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit A therein referred to, and in refusing to admit and excluding said 18th paragraph and the facts stated therein and the said Exhibit A, all of which were offered in evidence by said defendant and intervenors.

Said paragraph 18 is in words and figures as follows, to wit:

"That said board caused to be filed for record in the office of the recorder of said Tulare county, on September 14, 1889, the certified copy of the order hereunto annexed marked 'Exhibit A,' heretofore referred to, and no order of said board relating to the organization of said district was ever filed in the office of the county recorder of said Tulare county. That an election was called and held as recited in said 'Exhibit A,' of which due notice was given, and in such notice the lands of such proposed district were the same as those recited in said 'Exhibit A,' as constituting such proposed district."

Said Exhibit A is a copy of an order of the board of supervisors, entered on its minutes on September 2d, 1889, declaring said district organized and designating the persons elected as officers thereof.

XI.

Error in sustaining the objection of plaintiff to the admission in evidence of the 19th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 19th paragraph and the facts stated therein, all of which were offered in evidence by said defendant and intervenors.

Said 19th paragraph is in words and figures as follows, to wit:

"No other orders or proceedings relating to the organization of said district, were ever made or had by said board of supervisors, than as herein stipulated, and as recited in said exhibits."

443 XII.

Error in sustaining the objection of plaintiff to the admission in evidence of the 20th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 20th paragraph and the facts stated therein, all of which were offered in evidence by said defendant and intervenors. Said paragraph 19 is in words and figures as follows, to wit:

"That G. G. Kelly and B. W. Jauchius are the owners of the lands alleged in said complaint in intervention, as therein stated;

that said G. G. Kelly is a citizen of the United States and a resident of the State of Massachusetts, and that said B. W. Jauchius is a citizen of the United States and a resident of the State of California."

XIII.

Error in sustaining the objection of plaintiff to the introduction in evidence of a certified copy of the judgment-roll in the matter of the Tulare irrigation district. Said judgment-roll is composed of documents in substance as follows:

(1.) A petition by the board of directors of Tulare irrigation district to the superior court of Tulare county, setting forth the various proceedings which had been taken with a view to the organization of the Tulare irrigation district and the issuance of bonds by said district, and praying that said proceedings be judicially examined, approved and confirmed by the court.

(2.) An order by the superior court of Tulare county reciting the filing of the above-mentioned petition and ordering said petition set down for hearing and the giving of notice of the filing of said petition by publication and posting.

(3.) An affidavit by one Miles Ellsworth, showing the publication in the Tulare Weekly Register of the notice of the hearing of said petition.

444 (4.) An affidavit of one Edward Oakford, secretary of the board of directors of Tulare irrigation district, showing the posting of the notices of the hearing of said petition in the various precincts of said district.

(5.) The findings of fact and conclusions of law of said superior court in said confirmation proceedings, filed September 15, 1890. Said findings of fact set forth the taking of the various steps looking to the formation of the district, the election of officers and the issuance of bonds thereof, and the conclusions of law are to the effect that said district was regularly organized, and ever since its organization has been and still is a legal and valid irrigation district, and that all the proceedings for its organization are entitled to approval and confirmation; that the proceedings of the board of directors of said district providing for and authorizing the sale of the bonds of said district are legal and valid and entitled to approval and confirmation; and that the proceedings, orders and resolutions of said board for the issue of the bonds of said district and the order prescribing the form of such bonds, and the order for the sale of such bonds, are legal and valid and entitled to approval and confirmation, and that said board of directors is entitled to a judgment confirming all the proceedings mentioned in said petition.

(6.) The judgment of said court in said confirmation proceeding, dated September 15, 1890, ordering, adjudging and decreeing the proceedings leading up to the organization of said district, and the proceedings leading up to the issue of the bonds of said district, to be legal and valid, and that said district is a legal and valid irrigation district, having power to issue and sell the bonds of said district to the amount of $500,000, and that the bonds issued by said district are legal and valid and in proper form.

(7.) An answer of B. W. Jauchius, J. L. Gould, George C.
445 Kelly and Ralph Jones, to the said petition in said confirmation proceeding. Said answer contains denials of the various allegations in said petition and sets up the invalidity of the proceedings leading to the organization of the district and the invalidity of the proceedings leading up to the issuance of the bonds of said district, upon the various grounds specifically set forth in said answer, and prays that the approval and confirmation of the proceedings had by the directors of said district as alleged in the petition be denied by the court, that a decree may be had that said district was illegally organized and void, and that all the bonds issued by said district as set forth in the petition be declared void.

(8.) The opinion of the judge of the superior court stating the reasons relied upon by the court for setting aside the decree of confirmation hereinabove mentioned, and for entering a decree declaring the district illegal.

(9.) Findings of fact and conclusions of law, dated November 23, 1898. These findings set forth various defects in the proceedings leading to the organization of the district and in the proceedings leading to the issuance of the bonds, and as conclusions of law from the facts thus found, the court finds that the Tulare irrigation district is not legally organized, is not a valid irrigation district, and that the proceedings of the board of directors in providing for and authorizing the issue and sale of the bonds of said district to the amount of $500,000, are illegal and void, and that the order prescribing the forms of such bonds and the order for the sale of such bonds to the amount of $200,000, are illegal and void, and that the petitioners in the confirmation proceeding are not entitled to a judgment approving and confirming the proceedings mentioned in their petition, and that the defendants are entitled to a judgment denying such confirmation and adjudging and decreeing
446 that the proceedings had for the formation of such district, and all proceedings had since such formation, including the issue and sale of its bonds, are illegal and void.

(10.) The judgment in said confirmation proceeding dated November 23, 1898, adjudging that the Tulare irrigation district never was and is not a duly or legally organized irrigation district; that all of the proceedings by which said district was organized are null and void; that all the proceedings taken by the directors of the district for the purpose of the issue and sale of the bonds of said district to the amount of $500,000, are null and void, and that approval of the aforementioned proceedings is denied; and further adjudging and decreeing that the said district never has been, since its attempted organization, and is not a legally organized irrigation district, and had and has no power to issue or sell the bonds of said district, create indebtedness or perform any of the functions of an irrigation district.

XIV.

The court erred in denying the motion on the part of the defendant and intervenors to set aside and vacate the findings in favor of

plaintiff, and to make and enter findings in favor of the defendant on the ground that there was no evidence whatever to justify the findings in favor of plaintiff.

JOHN GARBER,
C. L. RUSSELL,
G. W. ZARTMAN,
GEORGE H. MAXWELL,
R. M. F. SOTO,
Attorneys for Plaintiff in Error, Tulare Irrigation District.
C. L. RUSSELL,
G. W. ZARTMAN,
JOHN GARBER,
Attorneys for Plaintiffs in Error, Geo. G. Kelly and G. Garibaldi, Executor of the Will of B. W. Jauchius, Deceased.

447 In the Supreme Court of the United States.

TULARE IRRIGATION DISTRICT, GEORGE G. KELLY, and G. GARIBALDI, Executor of the Last Will of B. W. Jauchius, Deceased, Plaintiffs in Error,

vs.

ALFRED SHEPARD, Defendant in Error.

Now come George G. Kelly and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, two of the plaintiffs in error herein, by their attorneys, —— ——, and assign and specify the following as errors upon which they will rely, and which they will urge in their writ of error in the above-entitled cause.

I.

The court erred in overruling and in not sustaining so much of the demurrer interposed by the defendant to the complaint, on the ground that said complaint does not state facts sufficient to constitute a cause of action.

II.

The court erred in holding and deciding that the said complaint is sufficient in law to support the judgment herein.

III.

The court erred in admitting in evidence the first twelve (12) paragraphs of the stipulation made by the parties hereto, as to the truth of certain facts, filed in said action on the 29th day of March, A. D., 1900, which twelve paragraphs, in substance, severally admit the following facts to be true:

1st paragraph.

That the plaintiff is and for ten years has been a citizen
448 and resident of the State of Michigan, and that David Shepard and F. G. Shepard for ten years have also been residents and citizens of the State of Michigan.

2nd paragraph.

That under the provisions of the act of the legislature of the State of California, entitled: "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property and for the distribution of water for irrigation purposes," approved March 7th, 1887, an effort was made in the county of Tulare, State of California, to form an irrigation district, and such proceedings in that behalf were had that what purported to be a certified copy of the order of said board of supervisors, was duly filed with the county recorder of said county on the 14th day of September, A. D. 1889, a certified copy of which certified copy is annexed to said stipulation, marked "A," which is an order made by the board of supervisors of the county of Tulare, and entered upon its minutes of the 2nd day of September, 1889, setting forth the result of an election held on the 24th day of August, 1889, within the proposed boundaries of said Tulare irrigation district, to vote on the question whether or not said district should be organized, designating the persons elected to the various offices prescribed by said act of the legislature, of March 7th, 1887, and declaring said district organized, under the name of "Tulare Irrigation District."

That the persons declared by said order of the board of supervisors to have been elected as officers of said district, immediately thereafter purported to organize as such officers and thereupon entered upon their duties as such officers the same as if said district had been legally organized, and as if there had been legally elected such officers, and that they and their successors in office have
449 ever since continued to act as such officers, and to maintain the name of "Tulare Irrigation District," and in its name have caused the defendant to act as if it was in every respect legally organized as an irrigation district, under said act of the legislature, and in that behalf has at all such times had the name of Tulare Irrigation District printed upon a sign above the door, in front of an office in which the archives and papers of said defendant are kept; and its board of directors have met from time to time in such room, from the time of such purported organization thereof until the present time, weekly, and sometimes oftener, averaging twice a month.

And in the years 1891, 1892 and 1893, its board of directors purported to issue bonds of such Tulare Irrigation District in the sum of $500,000, being 1000 bonds of the face value of $500 each, as hereinafter stated, and levied assessments on the property claimed to be embraced in said district, purporting to act in so doing under the said act of the legislature, and previous to July 1st, 1896, it assessed, levied and collected taxes upon the lands claimed to be in such district of over $100,000, and paid the same out as interest upon such bonds; that it has engaged in litigation as plaintiff in — suits, — of them before the issuance of said bonds, and therein alleged that it was a corporation under the provisions of the said act of the legislature, and from said time of its said purported organization until the present time, whatever it has done and performed, it has

done and performed in the same manner as if it had been legally organized as such district in full compliance with the law, and so continued to act and hold itself out as such corporation organized under said law.

3rd paragraph.

That the lands embraced in the limits of said district are and always have been in the said county of Tulare.

450 4th paragraph.

That after certain proceedings had been had by the board of directors of said defendant, the said defendant called a special election of the electors of said district, at which should be submitted the question whether or not bonds of said district should be issued to the amount of $500,000; that such an election was held on June 7th, 1889; that the said — was carried; and that on or about July 1st, 1890, the board of directors of said district ordered that bonds of said district in the sum of $500,000, be issued, divided into 1000 bonds of $500 each, numbered consecutively from one to one thousand.

5th paragraph.

That thereupon the said board of directors caused 1000 bonds of said district to be printed, and each of them, together with the coupons thereto attached, were in the form as alleged in the complaint herein, a copy of one of which bonds, numbered 400, is annexed to the complaint marked "Exhibit A."

6th paragraph.

That said bonds were all disposed of by the said board of directors during the years 1891, 1892 and 1893.

7th paragraph.

That as a result of the disposal of said bonds the defendant was enabled to and did build and construct an irrigation system, whereby it irrigated lands within the district, but not the whole thereof at any time.

8th paragraph.

That the interest coupons of each of said bonds were promptly paid every six months until July 1st, 1896.

9th paragraph.

That no one ever brought an action to prevent the issuance of any of said bonds.

451 10th paragraph.

That no suit or action was ever brought to annul or cancel or have declared void any of said bonds until after the year 1896, nor was any suit or action ever brought until after the year 1895 wherein the validity of any of said bonds was in any way questioned, nor

until after the year 1896, wherein the validity of any of said bonds 342 to 386 inclusive *were* in any way questioned except as to the constitutionality of the said act of the said legislature of March 7th, 1887, which action involving such constitutionality of such law was brought in November, A. D. 1895.

11th paragraph.

That the plaintiff, at the commencement of this action, was the holder of the coupons in the complaint alleged to be held and owned by him, and on which this action was brought.

12th paragraph.

That the plaintiff became the holder of the coupons on which this action is brought, some by purchase directly and others by mesne conveyance, in good faith, for the full value thereof, in the usual course of business, without any actual notice or knowledge of any defect, infirmity or invalidity of the bonds, or of any of them, to which said coupons, or any thereof, were attached, and without any actual notice or knowledge of the non-performance or non-observance of any requirements of the law necessary to their validity, and so became the holder thereof under the full belief that all the requirements of the law necessary to their validity had been performed and observed and complied with.

IV.

Error in admitting in evidence a certified copy of the judgment-roll in the matter of the Tulare Irrigation District. Said judgment-roll is composed of documents in substance as follows:

452 (1.) A petition by the board of directors of Tulare irrigation district to the superior court of Tulare county, setting forth the various proceedings which have been taken with a view to the organization of the Tulare irrigation district and the issuance of bonds by said district, and praying that said proceedings be judicially examined, approved and confirmed by the court.

(2.) An order by the superior court of Tulare county reciting the filing of the above-mentioned petition and ordering said petition set down for hearing and the giving of notice of the filing of said petition by publication and posting.

(3.) An affidavit of one Miles Ellsworth, showing the publication in the Tulare Weekly Register of the notice of the hearing of said petition.

(4.) An affidavit of one Edward Oakford, secretary of the board of directors of Tulare irrigation district, showing the posting of the notices of the hearing of said petition in the various precincts of said district.

(5.) The findings of fact and conclusions of law of said superior court in said confirmation proceedings, filed September 15, 1890. Said findings of fact set forth the taking of the various steps looking to the formation of the district, the election of officers and the issuance of bonds thereof, and the conclusions of law are to the effect that said district was regularly organized, and ever since its

organization has been and still is a legal and valid irrigation district, and that all the proceedings for its organization are entitled to approval and confirmation; that the proceedings of the board of directors of said district providing for and authorizing the sale of the bonds of said district are legal and valid and entitled to approval and confirmation; and that the proceedings, orders and resolutions of said board for the issue of the bonds of said district and the order prescribing the form of such bonds, and the order for the sale of such bonds, are legal and valid and entitled to
453 approval and confirmation, and that said board of directors is entitled to a judgment confirming all the proceedings mentioned in said petition.

(6.) The judgment of said court in said confirmation proceeding, dated September 15, 1890, ordering, adjudging and decreeing the proceedings leading up to the organization of said district, and the proceedings leading up to the issue of the bonds of said district, to be valid and legal and that district is a legal and valid irrigation district, having power to issue and sell the bonds of said district to the amount of $500,000, and that the bonds issued by said district are legal and valid and in proper form.

V.

The court erred in sustaining the objection of plaintiff to the admission in evidence of the 13th paragraph of said stipulation and the facts therein set forth, and to the admission in evidence of Exhibit B therein referred to, and in refusing to admit and excluding said 13th paragraph and the facts stated therein and said Exhibit B, all of which were offered in evidence by the defendant and intervenors. Said 13th paragraph is in words and figures as follows:

"That a petition, a copy of which is hereunto annexed marked 'Exhibit B,' was on the 1st day of July, 1889, filed with and presented to the board of supervisors of Tulare county at a regular meeting of said board, and no other petition for the organization of Tulare irrigation district has ever been presented to or filed with said board of supervisors which said petition was printed and published for two weeks during the month of June, 1889, in a newspaper printed and published in said Tulare county, to wit: the Weekly Tulare Register."

Said Exhibit B is a copy of a petition presented to the board of supervisors of Tulare county by parties whose names are signed to said petition and claiming to be freeholders owning land
454 within the proposed district; in said petition it is stated that the petitioners desire to provide for the irrigation of the land within the proposed district, all of which is susceptible to one mode of irrigation by conveying the waters of Kaweah river to said land; petitioners pray that the district described in the petition be organized as an irrigation district under the act of March 7, 1887 (the Wright act), and the petition contains a description by metes and bounds of the boundaries of the proposed district.

VI.

Error in sustaining the objection of plaintiff to the admission in evidence of the 14th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit C therein referred to, and in refusing to admit and excluding said 14th paragraph and the facts stated therein and said Exhibit C, all of which were offered in evidence by said defendant and intervenors. Said paragraph 14 is in words and figures as follows:

"That during the time said petition was printed and published in said newspaper, and immediately following and below said petition, as published, and in the same column of the paper, was printed a notice, a copy of which notice is hereunto annexed and marked 'Exhibit C,' and no other notice of the hearing of said or any petition for the organization of Tulare irrigation district, was ever given or published. Said notice was in the same type as said petition in said publication, and enclosed therewith, between two blank lines across the column, the first at the head of such petition, and the last at the end of such notice."

Said Exhibit C is in words and figures as follows:

"*Notice.*

"Pursuant to the statutes in such cases made and provided, notice is hereby given that the above and foregoing petition will be
455 presented to the board of supervisors in and for the county of Tulare, at their first regular meeting, in the month of July, 1889, to wit: on Monday, the 1st day of July, 1889, at which time any person or persons desiring so to do, may present their objections, if any they have, why said petition should not be granted."

VII.

Error in sustaining the objection of plaintiff to the admission in evidence of the 15th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit D therein referred to, and in refusing to admit and excluding said 15th paragraph and the facts stated therein and said Exhibit D, all of which were offered in evidence by said defendant and intervenors. Said 15th paragraph is in words and figures as follows, to wit:

"That at the time of the presentation of said petition, the said board of supervisors caused to be entered on the minutes of said board, the order set forth in paragraph VIII of page 17 of the defendant's answer herein, and on July 6th, 1889, said board caused to be entered on its said minutes, an order, a copy of which is alleged in said paragraph VIII to have been entered by said board on that date, and thereafter, on July 11th, 1889, said board caused to be entered on its minutes the order hereunto annexed marked 'Exhibit D.'"

Said order referred to in said 15th paragraph as appearing on page 17 of the defendant's answer, is an order entered on the minutes of the board of supervisors of Tulare county on July 1, 1889, and is to the effect that a petition praying for the formation of

an irrigation district to be known as the Tulare irrigation district having been filed and presented to the board, and the necessary bond having been filed with said petition and it satisfactorily appearing to the board that due notice of the presentation of
456 said petition had been given as required by law, and certain persons having appeared and asked to have their lands excluded from the district, thereupon the board ordered that the hearing of the said petition be set for Saturday, July 6, 1889, at 10 a. m. Said order referred to as entered on July 6th, is an order stating that the board occupied the day in hearing testimony to have lands excluded from said district.

Said Exhibit D referred to in said 15th paragraph is a copy of an order of the board of supervisors of Tulare county made after the hearing of the petition for the formation of the Tulare irrigation district. Said order recities the proceedings taken in connection with the petition, including the publication of the notice of the hearing hereof and the fact that certain parties had been heard upon the question whether their lands should be excluded from the district. Said order then proceeds to declare and establish the boundaries of the proposed irrigation district and describes them by metes and bounds, with a specific description of certain lands excepted and taken out of the proposed district as thus described. The order further provides for the division of the proposed district into five divisions, and describes the boundaries of each division. It further orders an election for the purpose of determining whether the proposed district shall be organized, and names the time and the various polling places. The order further provides for notice of such election and names the offices of the proposed district which are to be filled by officers to be voted for at said election, and concludes by describing the five election precincts.

VIII.

Error in sustaining plaintiff's objection to the admission in evidence of paragraph 16th of said stipulation and the facts therein set forth, and to the admission of Exhibit E therein referred to, and in refusing to admit and excluding said 16th paragraph and the facts stated therein and said Exhibit E, all of which were offered in evidence by said defendant and intervenors. Said paragraph 16 is in words and figures as follows, to wit:

457 "That on the 2nd day of September, 1889, the clerk of said board of supervisors entered upon their minutes an order purporting to have been passed by said board, a true copy of which order in full, is hereunto annexed, and marked 'Exhibit E.'"

Said Exhibit E referred to in said 16th paragraph is a copy of an order of the board of supervisors of Tulare county, by which said board of supervisors declare the result of their canvass of the election held for the purpose of voting for and against the organization of the Tulare irrigation district and officers thereof. In this order the supervisors made a statement of the votes cast for and against the organization of the district, showing the result to be in favor of organizing the district, and a further statement of the

number of votes cast for the various officers of the district. The order then declares the territory embraced within certain limits, which are specifically described by metes and bounds, to be an irrigation district, duly organized under the name and style of Tulare Irrigation District, and further declares the election of certain named parties as officers of the district.

IX.

Error in sustaining the objection of plaintiff to the admission in evidence of the 17th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 17th paragraph and the facts stated therein, all of which were offered in evidence by said defendant and intervenors. Said 17th paragraph is in words and figures as follows, to wit:

"That said petition so presented July 1st, 1889, was not copied or set out at length in the minutes of the said board of supervisors, nor in any way referred to or identified than as appears in the orders of said board hereinbefore set forth and hereto annexed."

458

X.

Error in sustaining objection of plaintiff to the admission in evidence of the 18th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit A therein referred to, and in refusing to admit and excluding said 18th paragraph and the facts stated therein and the said Exhibit A, all of which were offered in evidence by said defendant and intervenors.

Said paragraph 18 is in words and figures as follows, to wit:

"That said board caused to be filed for record in the office of the recorder of said Tulare county, on September 14, 1889, the certified copy of the order hereunto annexed marked 'Exhibit A' hereinbefore referred to, and no other order of said board relating to the organization of said district was ever filed in the office of the county recorder of said Tulare county. That an election was called and held as recited in said 'Exhibit A,' of which due notice was given, and in such notice the lands of such proposed district were the same as those recited in said 'Exhibit A' as constituting such proposed district."

Said Exhibit A is a copy of an order of the board of supervisors, entered on its minutes of September 2nd, 1889, declaring said district organized and designating the persons elected as officers thereof.

XI.

Error in sustaining the objection of plaintiff to the admission in evidence of the 19th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 19th paragraph and the facts stated therein, all of which were offered in evidence by said defendant and intervenors. Said 19th paragraph is in words and figures as follows, to wit:

"No other orders or proceedings relating to the organization of

said district, were ever made or had by said board of supervisors, than as herein stipulated, and as recited in said exhibits."

459 XII.

Error in sustaining the objection of plaintiff to the admission in evidence of the 20th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 20th paragraph and the facts stated therein, all of which were offered by said defendant and intervenors. Said paragraph 19 is in words and figures as follows, to wit:

"That G. G. Kelly and B. W. Jauchius are the owners of the lands alleged in said complaint in intervention, as therein stated; that said G. G. Kelly is a citizen of the United States and a resident of the State of Massachusetts, and that said B. W. Jauchius is a citizen of the United States and a resident of the State of California."

XIII.

Error in sustaining the objection of plaintiff to the introduction in evidence of a certified copy of the judgment-roll in the matter of the Tulare Irrigation District. Said judgment-roll is composed of documents in substance as follows:

(1.) A petition by the Board of Directors of Tulare Irrigation District to the superior court of Tulare county, setting forth the various proceedings which had been taken with a view to the organization of the Tulare irrigation district and the issuance of bonds by said district, and praying that said proceedings be judicially examined, approved and confirmed by the court.

(2.) An order of the superior court of Tulare county reciting the filing of the above-mentioned petition and ordering said petition set down for hearing and the giving of notice of the filing of said petition by publication and posting.

(3.) An affidavit of one Miles Ellsworth, showing the publication in the Tulare Weekly Register of the notice of the hearing of said petition.

460 (4.) An affidavit of one Edward Oakford, secretary of the board of directors of Tulare irrigation district, showing the posting of the notices, of the hearing of said petition in the various precincts of said district.

(5.) The findings of fact and conclusions of law of said superior court in said confirmation proceedings, filed September 15, 1890. Said findings of facts set forth the taking of the various steps looking to the formation of the district, the election of officers and the issuance of bonds thereof, and the conclusions of law are to the effect that said district was regularly organized, and ever since its organization has been and still is a legal and valid irrigation district, and that all the proceedings for its organization are entitled to approval and confirmation; that the proceedings of the board of directors of said district providing for and authorizing the sale of the bonds of said district are legal and valid and entitled to approval and confirmation; and that the proceedings, orders and

resolutions of said board for the issue of the bonds of said district and the order prescribing the form of such bonds, and the order for the sale of such bonds, are legal and valid and entitled to approval and confirmation, and that said board of directors is entitled to a judgment confirming all the proceedings mentioned in said petition.

(6.) The judgment of said court in said confirmation proceeding, dated September 15, 1890, ordering, adjudging and decreeing the proceedings leading up to the organization of said district, and the proceedings leading up to the issue of the bonds of said district to be legal and valid, and that said district is a legal and valid irrigation district, having power to issue and sell the bonds of said district to the amount of $500,000, and that the bonds issued by said district are legal and valid and in proper form.

(7.) An answer of B. W. Jauchius, J. L. Gould, George C.
461 Kelly and Ralph Jones, to the said petition in said confirmation proceeding. Said answer contains denials of the various allegations in said petition and sets up the invalidity of the proceedings leading to the organization of the district and the invalidity of the proceedings leading up to the issuance of the bonds of said district, upon the various grounds specifically set forth in said answer, and prays that the approval and confirmation of the proceedings had by the directors of said district as alleged in the petition be denied by the court, that a decree may be had that said district was illegally organized and void, and that all the bonds issued by said district as set forth in the petition be declared void.

(8.) The opinion of the judge of the superior court stating the reasons relied upon by the court for setting aside the decree of confirmation hereinabove mentioned, and for entering a decree declaring the district illegal.

(9.) Findings of fact and conclusions of law, dated November 23, 1898. These findings set forth various defects in the proceedings leading to the organization of the district and in the proceedings leading to the issuance of the bonds, and as conclusions of law from the facts thus found, the court finds that the Tulare irrigation district is not legally organized, is not a valid irrigation district, and that the proceedings of the board of directors in providing for and authorizing the issue and sale of the bonds of said district to the amount of $500,000, are illegal and void, and that the order prescribing the forms of such bonds and the order for the sale of such bonds to the amount of $200,000, are illegal and void, and that the petitioners in the confirmation proceeding are not entitled to a judgment approving and confirming the proceedings mentioned in their petition, and that the defendants are entitled to a judg-
462 ment denying such confirmation and adjudging and decreeing that the proceedings had for the formation of such district, and all proceedings had since such formation, including the issue and sale of its bonds, are illegal and void.

(10.) The judgment in said confirmation proceeding dated November 23, 1898, adjudging that the Tulare irrigation district never was and is not a duly or legally organized irrigation district, that

all of the proceedings by which said district was organized are null and void; that all the proceedings taken by the directors of the district for the purpose of the issue and sale of the bonds of said district to the amount of $500,000, are null and void, and that approval of the aforementioned proceedings is denied; and further adjudging and decreeing that the said district never has been, since its attempted organization, and is not, a legally organized irrigation district, and had and has no power to issue or sell the bonds of said district, create indebtedness or perform any of the functions of an irrigation district.

XIV.

The court erred in denying the motion on the part of the defendant and intervenors to set aside and vacate the findings in favor of plaintiff, and to make and enter findings in favor of the defendant on the ground that there was no evidence whatever to justify the findings in favor of plaintiff.

JOHN GARBER,
C. L. RUSSELL,
G. W. ZARTMAN,
GEORGE H. MAXWELL,
R. M. F. SOTO,
Attorneys for Plaintiff in Error, Tulare Irrigation District.
C. L. RUSSELL,
G. W. ZARTMAN,
JOHN GARBER,
Attorneys for Plaintiffs in Error, Geo. G. Kelly and G. Garibaldi, Executor of the Will of B. W. Jauchius, Deceased.

463 (Endorsed:) No. 859. In the circuit court of the United States, ninth circuit, in and for the southern district of California. Alfred Spehard, plaintiff *vs.* Tulare Irrigation District, defendant. Assignment of errors. Filed Dec. 23 1901 Wm. M. Van Dyke, clerk Chas. N. Williams deputy.

464 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant.

Order Allowing Writ of Error.

Tulare Irrigation District, defendant in the above-entitled action, and George G. Kelly, an intervenor in said action, and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, the other intervenor in said action, having filed in the circuit court of the United States, ninth circuit, in and for the southern district of California, their petition for a writ of error from the judgment entered

therein on the 30th day of March, 1901, pursuant to the decision of the court therein rendered, and having filed their assignment of errors; and it appearing that subsequently to the entry of said judgment said B. W. Jauchius died, leaving a last will and testament which was admitted to probate by the superior court of the county of Tulare, State of California, and letters testamentary issued thereon to said G. Garibaldi, by said superior court, and that said G. Garibaldi has filed herein a certified copy of said letters testamentary,

It is ordered that a writ of error be and is hereby allowed, to have reviewed in the Supreme Court of the United States the said judgment heretofore entered herein, and that said writ of error do issue in the form of law according to the statute in such case made
465 and provided, and that the amount of bond on said writ of error be and is hereby fixed at $1000.00.

Dated, December 23rd, 1901.

OLIN WELLBORN, *Judge.*

(Endorsed:) No. 859. In the circuit court of the United States, ninth circuit, in and for the southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, defendant. Order allowing writ of error. Filed Dec. 23 1901 Wm. M. Van Dyke, clerk. Chas. N. Williams deputy.

466 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant. } No. 859.

Bond on Writ of Error.

Know all men by these presents, that we, Tulare Irrigation District, George G. Kelly and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, principals, and John Burgan, G. Q. Gill and S. Richardson as sureties, are held and firmly bound unto Alfred Shepard, plaintiff above named, in the sum of one thousand (1000) dollars, to be paid to the said Alfred Shepard, his executors and administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated the 19th day of December, 1901.

Whereas, the above-named defendant, Tulare Irrigation District, and the said George G. Kelly, and the said G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, have sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the above-entitled cause by the circuit court of the United States for the southern district of California.

Now, therefore, the condition of this obligation is such, that if the above-named Tulare Irrigation District, George G. Kelly and G.

Garibaldi, executor of the last will of B. W. Jauchius, de-
467 ceased, shall prosecute said writ to effect and answer all costs and damages, if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

TULARE IRRIGATION DISTRICT,
By its attorneys, G. W. ZARTMAN AND
C. L. RUSSELL.
GEORGE G. KELLY,
By his attorneys, G. W. ZARTMAN AND
C. L. RUSSELL.
G. GARIBALDI,
As Executor of the Will of B. W. Jauchius, Deceased.
JOHN BURGAN.
G. Q. GILL.
S. RICHARDSON.

STATE OF CALIFORNIA, } ss:
County of Tulare, }

John Burgan, G. Q. Gill and S. Richardson whose names are subscribed to the above undertaking, being severally duly sworn, each for himself says: That he is a resident and freeholder within said State of California, and is worth the sum in said bond specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

JOHN BURGAN.
G. Q. GILL.
S. RICHARDSON.

Subscribed and sworn to before me this 19th day of December, 1901.

G. W. ZARTMAN,
[SEAL.] *Notary Public in and for the County of Tulare, State of California.*

Endorsed: Form of bond and sufficiency of sureties approved. Olin Wellborn judge.

468 (Endorsed:) No. 859. In the circuit court of the United States, ninth circuit, in and for the southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, defendant. Bond on writ of error. Filed Dec. 23 1901 Wm. M. Van Dyke, clerk Chas. N. Williams, deputy —

469 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant; GEORGE G. Kelly and B. W. Jauchius, Defendants and Intervenors. } No. 859.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, do hereby certify the foregoing four hundred and sixty-eight (468) typewritten pages numbered from 1 to 468 inclusive, and comprised in one volume to be a full, true and correct copy of the record, pleadings, opinions of the court, papers, assignment of errors, and of all proceedings in the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error.

470 I do further certify that the cost of the foregoing record is $303.05 the amount whereof has been paid me by the Tulare Irrigation District, George G. Kelly and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, the plaintiffs in error in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, this 26th day of December, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-sixth.

Seal U. S. Circuit Court, Southern Dist. Cal., 1886.

WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California,
By CHAS. N. WILLIAMS,
Deputy Clerk.

471 In the Supreme Court of the United States.

TULARE IRRIGATION DISTRICT, GEORGE G. KELLY, and G. GARIBALDI, Executor of the Will of B. W. Jauchius, Deceased, Plaintiffs in Error,
vs.
ALFRED SHEPARD, Defendant in Error.

It is hereby stipulated and agreed, that in printing the record in the above-entitled cause there may be omitted from the printed record the hereinafter-specified portions of the record as the same appears in the transcript transmitted by the clerk of the circuit court to the clerk of the Supreme Court; and that said cause may be submitted, considered and determined upon the remaining portions of said record, that is to say, upon all of said record other than the

said portions which are omitted from the printed record, as aforesaid.

The said portions of said record which are to be omitted from the printed record as aforesaid, are the following, to wit:

1. An exhibit marked "A," annexed to the complaint in intervention of the intervenors George G. Kelly and B. W. Jauchius.

2. An exhibit marked "H," contained and set forth in the bill of exceptions, said Exhibit "H" being a pamphlet which was offered in evidence by the defendant and intervenors.

Dated, ——.

CALVIN L. RUSSELL,
G. W. ZARTMAN,
JOHN GARBER,
GEORGE H. MAXWELL,
R. M. F. SOTO,
Attorneys for Plaintiff in Error, Tulare Irrigation District.

CALVIN L. RUSSELL,
G. W. ZARTMAN,
JOHN GARBER,
Attorneys for Plaintiffs in Error, George G. Kelly and G. Garibaldi, Executor of the Will of B. W. Jauchius, Deceased.

S. F. LEIB,
Attorney for Defendant in Error, Alfred Shepard.

472 [Endorsed:] In the Supreme Court of the United States. Tulare Irrigation District, *et al.*, plaintiffs in error, *vs.* Alfred Shepard, defendant in error. Stipulation as to printing of record.

473 [Endorsed:] File No. 18361. Supreme Court U.S. October term, 1901. Term No. 508. Tulare Irrigation District *et al.*, P. E. *vs.* Alfred Shepard. Stipulation to omit parts of record in printing. Filed Jan'y 9, 1902.

Endorsed on cover: File No. 18,361. S. California C. C. U. S. Term No. 508. Tulare Irrigation District, George G. Kelly, and G. Garibaldi, as executor of the last will of B. W. Jauchius, deceased, plaintiff in error, *vs.* Alfred Shepard. Filed January 4th, 1902.

IN THE

Supreme Court of the United States.

TULARE IRRIGATION DISTRICT, GEORGE G. KELLY and G. GARIBALDI, executor of the last will of B. W. Jauchius, deceased,

Plaintiffs in error,

vs.

ALFRED SHEPARD,

Defendant in error.

In error to the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California:

BRIEF FOR PLAINTIFFS IN ERROR.

PART FIRST.

STATEMENT OF FACTS.

The action in the Court below was brought against the defendant Tulare Irrigation District by the plaintiff,

who claimed to be the owner of bonds issued by said district, to obtain a judgment against said district for various amounts alleged to have fallen due from time to time upon the coupons attached to the bonds. Judgment was given in favor of plaintiff as prayed for, and from this judgment the present writ of error is taken to this Court.

As appears from the contentions set up in the pleadings of defendant and intervenors, and from the objections taken by them to the evidence offered by the plaintiff, and from the nature of the evidence which they sought to introduce, these parties relied upon what they claimed to be rights protected by the provisions of the United States constitution, and attacked certain statutes of the State of California as in conflict with that constitution. It thus appears from the record, that the case is one involving the construction or application of the constitution of the United States and one in which a law of the state is claimed to be in contravention of that constitution.

COMPLAINT.

In the complaint it is alleged that the plaintiff is a citizen of the State of Michigan and a non-resident of the State of California; that the defendant is and at all times since September 2, 1889, has been a corporation, to wit: an irrigation district, organized under and pursuant to an act of the California Legislature providing for the organization of such districts, and that ever since the last named date defendant has acted and still

is acting as such corporation under said statute and its amendments; that all of the land in said district is in the County of Tulare.

That in May, 1890, the directors of the district estimated the amount of money necessary to be raised for the purpose of constructing the necessary canals and works and acquiring the necessary water and property and rights therefor, and of otherwise carrying out the provisions of the said Act, and estimated and determined the necessary amount to be the sum of $500,000, and that said board immediately called an election of the electors of the district to submit to them the question whether the bonds of the district should be issued in the amount of $500,000. That notice of said election was given by posting in each precinct of the district for at least twenty days and by publication in a newspaper published in Tulare County, once a week for three successive weeks, which notices so posted and published specified the time of the election and the amount of the proposed bonds.

That at said election a majority of the votes cast were in favor of the bonds being issued to the amount of $500,000, there being 384 votes in favor of and 50 against said bonds, and that thereupon said Board of Directors caused the bonds of said defendant in the amount of $500,000 to be issued.

Then follow allegations showing the numbers, face value and form of the bonds, and of the interest coupons thereto attached. Exhibits are attached to the com-

plaint showing the form of the bonds and coupons.

It is next alleged that a portion of said bonds were, by said defendant and its board of directors, sold, issued and delivered for at least ninety per cent of their par value, and the proceeds used for the construction of canals and irrigation works, and that the remaining part of said bonds were exchanged and delivered at their par value for the conveyance to said district of water, water rights and other property for irrigation purposes, and that said district was thereby enabled to and has irrigated the land of such district.

That the parties who received from the district upon sale and exchange the bonds and coupons specifically referred to by their numbers in said complaint, sold, transferred and delivered the same to innocent and *bona fide* purchasers for the full value thereof, which said purchasers took said bonds and coupons in good faith and without any notice of any defect or invalidity of the same. Said bonds are then enumerated by reference to their numbers.

It is next alleged that the defendant paid regularly the first eleven installments of interest on said bonds, but has not paid any part of certain other installments of interest. The complaint then specifically enumerates these last mentioned installments. It is then alleged that all of said unpaid coupons were delivered to the plaintiff prior to October 1, 1898, and the plaintiff has ever since been the owner, holder and bearer thereof. That plaintiff bought a part of said unpaid coupons be-

fore their maturity and paid their full value, without any notice of any defect or invalidity of the same, and that the remainder of said unpaid coupons were transferred to plaintiff by parties who had purchased the same before their maturity in good faith for full value and without any notice of any defect or invalidity of the same. Then follows a specific enumeration by numbers of the bonds to which the coupons bought by plaintiff before their maturity are attached.

It is then alleged, that before the commencement of this action and on October 9, 1898, plaintiff presented to the Treasurer of the defendant at the office of said Treasurer in Tulare, all of said unpaid coupons, and demanded from said Treasurer payment of said coupons; that said Treasurer refused to pay said coupons or any of them or any part thereof.

The complaint closed with a prayer for judgment against the defendant for the sum of $13,185 with interest at the rate of six per cent per annum upon the various unpaid installments from the time when they respectively fell due.

DEMURRER.

The defendant, Tulare Irrigation District, filed a demurrer to the foregoing complaint. This demurrer was on the ground that the complaint does not state facts sufficient to constitute a cause of action against the defendant, and on the further ground that it was uncertain in certain specified particulars, and that it was ambiguous and unintelligible in the same respects.

ANSWER.

The answer denies that the defendant was ever incorporated as an irrigation district, or that it ever acted as such otherwise than as in the answer set forth; denies that the directors ever made any estimate or determination of the money necessary for irrigation work, or that they called an election to determine whether bonds should be issued, except as in the answer set forth. Denies that notice of such election was given in any way or for any time otherwise than as set forth in the answer; or that a majority or any number of votes were cast at said election in favor of the bonds, except as set forth in the answer. Denies that the Directors caused the bonds to be issued except as in the answer set forth; denies that the bonds were issued in any form, manner or amount except as stated in the answer; denies that any of the bonds were ever sold, issued or delivered for ninety or any per cent of their par value, or that the proceeds were used for canals or irrigation works for defendant; denies that any part of the bonds were issued or delivered at the par value for water, water rights or other property for irrigation purposes, or that the defendant has thereby or otherwise been enabled to or has irrigated the lands of the district. Denies that the bonds and coupons specified in the complaint were sold to *bona fide* purchasers for full value and without notice of all defects and invalidity of the same. Denies that defendant paid installments of the interest on said bonds, except as set forth in the answer. Denies that

plaintiff bought any part of the unpaid coupons mentioned in the complaint prior to the maturity of such coupons, for full value and without notice of all defects and invalidity, or acquired the rest of said coupons from persons who had purchased them prior to their maturity for full value without notice of all defects and invalidity.

The answer sets forth in full the petition for the formation of the district, and alleges that no other petition for the formation of said district was ever presented to or filed with the Board of Supervisors. It alleges the publication of said petition for two weeks in a newspaper, together with a notice of the presentation to the Supervisors of the petition, which notice is set forth in full in the answer, and it is alleged that no other notice of the hearing of said petition was ever given or published, and that said notice was not signed by the petitioners, or by any one, and was void and illegal, and that all proceedings based on it were illegal and without jurisdiction and in violation of the 14th amendment to the constitution of the United States. The answer sets forth in full an order of the Board of Supervisors postponing the hearing of the said petition and an order establishing the boundaries of the district and its precincts, and calling an election on the question whether a district shall be formed and for the election of officers of such district; it also sets forth in full an order of the Board of Supervisors declaring the result of the election, and declaring certain specifically described lands to be constituted the Tulare Irrigation District.

The answer sets forth in full the bond filed with the said petition, and alleges that the same was invalid, in that it did not bind its signers to perform the acts which the law requires and was not made payable to the payee designated by the law, and its sureties were parties who appeared in the petition as petitioners. The answer alleges that no notice of the election concerning the formation of the district was given; that no copy of the order declaring the district organized was filed by the Supervisors with the County Recorder; that the Supervisors excluded from the district part of the land described in the petition, and that the land so excluded was susceptible of irrigation by the same system of works as the rest of the land. It is further alleged that no proceedings for the organization of the district other than those set forth in the answer were ever taken or had.

It is further alleged that by reason of the facts already set forth, the attempted organization was a nullity; that the district was never legally organized; that its so-called officers had no power to issue bonds or coupons, and that the pretended bonds and coupons are void and were issued in violation of the XIVth amendment to the constitution of the United States.

The answer further alleges that a pretended election for the purpose of determining whether bonds should be issued in the sum of $500,000 was attempted to be held on the 7th day of June, 1890, and that said election was declared by an order of the Board of Directors to have been carried in favor of the issuance of bonds in

said sum, and that thereafter the Directors ordered that bonds in said sum be issued in the manner and form prescribed by law.

That at no time since the pretended organization of the district was a system of works or one mode of irrigation from a common source of supply ever established or located, nor was any common source of supply located or established for any irrigation system, nor was any system of irrigation ever established for or by said district, and no line of canals and branches for the irrigation of the land of the district was ever fixed or determined. It is further alleged that none of the bonds of the district have been used in the purchase, at the par value thereof, of any water, water rights or other property necessary for an irrigation system, nor have any of said bonds been sold for ninety per cent of the face value thereof, but that the Directors have disposed of the $500,000 of bonds in exchange for water rights, canals and ditches which were worthless and unavailable for the purpose of irrigating lands in said district, and in payment for labor on canals in the district, and in furnishing security for the payment of notes executed by members of the Board of Directors. It is further alleged that no notice of intention to exchange any of said bonds for ditches and water rights was ever given, and said exchanges of said bonds were illegal and void. It is further alleged that bonds exchanged for work done in the district and for canals, ditches and water rights, were taken at prices much less than the

par value thereof, and that the said labor, canals, ditches and water rights were taken at a price greatly in excess of their value, and that the Board of Directors were aware of these facts, and that said exchanges of bonds were unlawful, oppressive and fraudulent.

It is further alleged that all the bonds issued by the district recite that they are issued by authority of the Act of March 7th, 1887, and that in the sale, exchange or disposal of said bonds there was no warranty of their validity.

It is further alleged that none of the lands in the district is or ever was desert in character, but that it had for many years produced agricultural crops without artificial irrigation; and that a large portion of the land in the district is not susceptible of irrigation, and would not be benefited but would be injured thereby.

It is further alleged that upon the hearing of the petition for the organization of the district, the Board of Supervisors established and defined the boundaries of the district, but that as so established and as set forth in the order of the Board of Supervisors, the district consisted of four non-contiguous tracts of land, and that the Board had no power or jurisdiction to establish a district of this kind.

That the Act of March 7th, 1887, in so far as it attempts to confer on the Supervisors authority to conduct proceedings for the organization of irrigation districts is in conflict with the provisions of the con-

stitution of California relating to the delegation of legislative powers by the state legislature.

The answer then alleges that in August, 1890, the directors of the district instituted a proceeding in the Superior Court of Tulare County for the judicial approval and confirmation of the proceedings for the organization of the district and for the issuance of bonds.

The answer sets forth the substance of the petition in said confirmation proceeding, and alleges that in May, 1898, an answer to said petition was filed by leave of Court. This answer is set forth, in substance, showing allegations of various facts relied upon as grounds for the contention that the district and the bonds are illegal and void.

It is then alleged, that after the filing of said answer, such proceedings were had in the confirmation proceeding that on November 23rd, 1898, the Superior Court entered an order, which order is set forth in full. It is an order refusing to confirm the proceedings for the organization of the district and the issuance of bonds, and adjudging and decreeing all of these proceedings to be null and void.

The answer then sets up the statute of limitations as against plaintiff's claims and concludes with a prayer that plaintiff take nothing by the action, and that he be required to deliver to the Court all the coupons and bonds mentioned in the complaint, and that it be

adjudged and decreed that such bonds and coupons are illegal and void, and that they be cancelled and destroyed, and that plaintiff be enjoined from transferring or circulating them.

THE COMPLAINT IN INTERVENTION.

A complaint in intervention was filed by two intervenors, B. W. Jauchius and G. G. Kelly. This contained the same denials and allegations as the answer of the defendant, Tulare Irrigation District, with an additional allegation to the effect that the intervenors were owners of land within the district. By written stipulation of counsel for all the parties, it was agreed that the allegations of the complaint in intervention should be deemed to be denied. This stipulation was approved by the Court and filed.

TRIAL AND DECISION.

The case was thereupon tried and submitted to the Court for consideration and decision (a jury trial having been waived by written stipulation of the parties before the commencement of the trial). Counsel representing all the parties entered into two written stipulations as to the facts, and portions of these stipulations were offered in evidence by the plaintiff, and other portions of the same by the defendant and intervenors. Other evidence was offered by each side. After the submission of the case, as aforesaid, the Court, on the 30th day of March, 1901, decided the same in favor of the plaintiff. There were no specific findings but merely a

general finding in favor of the plaintiff on all the issues joined, and an assessment of plaintiff's damages at the sum of $13,185. Thereafter, the defendant and intervenors moved the Court for a new trial, and pending said motion the same parties moved the Court to set aside and vacate the findings, and to make findings in favor of the defendant, on the ground that there was no evidence whatever to justify the findings for the plaintiff. The Court denied these motions.

Thereafter, on the 30th day of March, 1901, judgment was entered in favor of the plaintiff in the sum of $13,185.

Within the time allowed by law and by the stipulations of the parties and orders of Court in that behalf made, the defendant and intervenors presented to the Court their proposed bill of exceptions, which was duly allowed, settled and approved by the Court on April 4th, 1901.

Thereafter, B. W. Jauchius, one of the intervenors, died, and his will was admitted to probate and letters testamentary thereon issued to G. Garibaldi, one of the plaintiffs in error herein.

Thereafter said G. Garibaldi filed in the office of the Clerk of said Circuit Court a certified copy of said letters testamentary.

Thereafter, on December 23rd, 1901, the plaintiffs in error herein presented their petition for a writ of error, together with their assignments of error, which writ of

error was by order of the Court duly allowed on said date; and the bond on writ of error, as required and fixed by order of the Court, was duly given and filed. Whereupon the writ of error and citation were duly issued and served, and the answer of the Judges of the Circuit Court of the United States of the Ninth Judicial Circuit, with the record and all proceedings, were duly certified to this Court.

QUESTIONS INVOLVED.

The plaintiffs in error contend that the judgment rendered in the Court below is erroneous and should be reversed, because,

1. The attempted organization of the Tulare Irrigation District was entirely ineffectual and void, by reason of non-compliance with various essential conditions imposed by the statute under and pursuant to which the attempt to form the district was made. Among these conditions is the publication of a notice of the hearing of the petition for the formation of the district. No such notice as that provided for by the statute was ever published or given, and the pretended notice which was published was so radically defective as to amount to no notice whatever; and therefore the proceedings looking toward the formation of the district were wholly ineffective, and the so-called district is and always was a mere nullity, and conse-

quently the so-called bonds of the district were likewise null and void.

This question was raised by the defendant's demurrer to the complaint (*Record* p. 15), since, in order to state a cause of action, the complaint should have shown affirmatively that the statutory notice was given. It arose also upon the ruling of the Court (*Record* p. 300), sustaining the plaintiff's objection to the introduction in evidence of the 14th paragraph of the stipulation of facts (*Record* p. 236) and an exhibit annexed to said stipulation and marked Exhibit "C" (*Record* p. 253). The evidence thus rejected was such as to show the exact character of the only notice of the hearing of the petition for the formation of the district which was ever published or given, and that such pretended notice was fatally defective.

The question also arose upon the ruling of the Court (*Record* p. 270), overruling the objection to the introduction in evidence of the first twelve paragraphs of the stipulation of facts (*Record* pp. 223–236), which, together with an exhibit annexed to said stipulation and marked "Exhibit A" (*Record* p. 239), were offered by the plaintiff. The evidence thus offered was irrelevant, immaterial and incompetent, because it contained no showing of the existence of the facts essential to the valid and lawful organization of the alleged district, but consisted wholly of a showing of the existence of the district as a *de facto* organization, and of the issuance of bonds by parties claiming to be

the officers of this *de facto* organization, and of the purchase and negotiation of these bonds.

2. The records of the Board of Supervisors in the proceedings for the formation of the district fail to show that such publication of the notice of the hearing of the petition for the formation of the district was made as is prescribed by the statute; and hence it follows that the records of the Board of Supervisors do not disclose upon their face the existence of the jurisdictional facts which were conditions precedent to the creation of the proposed district. The result is that the action of the supervisors in attempting the formation of the district must be treated as unauthorized and ineffective.

This question arises upon the ruling of the Court (*Record* p. 300), sustaining the plaintiff's objection to the introduction in evidence of the 15th paragraph of the stipulation of facts (*Record* p. 237), and the exhibit marked "D" (*Record* p. 253), annexed to said stipulation. This evidence was such as to fully disclose the contents of all of the orders of the board relating to the publication of the above mentioned notice.

3. It was permissible, even in a collateral action, to prove the absence of such a jurisdictional fact as the due publication of the notice of hearing of the petition for the formation of the district; and this could be done even if it involved contradicting the recitals in the orders or other records of the Board of Supervisors.

The question arises upon the above-mentioned ruling of the Court sustaining the plaintiff's objection to the introduction in evidence of the 14th paragraph of the stipulation of facts and an exhibit annexed to said stipulation and marked "Exhibit C". The evidence thus rejected was such as to show that no notice of the hearing of the petition for the formation of the district was ever given as required by law; and the contention of the plaintiffs in error is that they were entitled to show this even if it were assumed (though this is not admitted by plaintiffs in error), that the records of the Board of Supervisors contained recitals, which, if true, would establish the fact of notice.

4. The plaintiffs in error were entitled to show that the notice of the hearing of the petition for the formation of the district was fatally defective, in spite of the fact that in the case of *Central Irrigation District* vs. *DeLappe* (79 Cal. 351), the Supreme Court of California had held a district to be duly organized by proceedings in which the notice was open to the same objections as those relied on here. No question as to the sufficiency of the notice upon which the due organization of Central District depended was raised or considered in the *DeLappe case*, and afterwards, when the sufficiency of this notice was called in question before the Supreme Court of California (*In re Central Irrigation District*, 117 Cal. 382), it was held to be fatally defective. It thus appears that the decision in the *DeLappe case*, cannot be treated as having established the validity of

such a notice as that involved in that case. The decision did not become a rule of property within the doctrine of the case of *Gelpcke* vs. *City of Dubuque*, 1 Wall. 175.

This question arises upon the above mentioned ruling of the Court sustaining plaintiff's objection to the introduction in evidence of the 14th paragraph of the stipulation of facts and an exhibit annexed to said stipulation and marked "Exhibit C", which evidence disclosed the fatal insufficiency of the notice in question.

5. The plaintiffs in error cannot be precluded from questioning the validity of the district or the validity of its purported bonds, by the device of setting up the *de facto* existence of the district. Even if the district were a corporation *de facto*, it would not follow that it could issue bonds which would be a charge upon the lands within the boundaries of the district. Before such burdens can be imposed, the land owner must be accorded a hearing upon the question whether his land will be benefited by being included within the proposed district. To subject his lands to the burden of the bonds of the district, without giving the notice of the hearing of the petition for the formation of the district which the law requires, would be to deprive him of his property without due process of law, in violation of the XIVth amendment to the constitution of the United States. This objection cannot be disposed of by the device of calling the district a *de facto* corporation, and, on that ground, refusing to inquire whether an essen-

tial condition precedent of the formation of the district has been fulfilled. Unless the notice of the hearing of the petition for the formation of the district has been given as prescribed by law, the pretended organization is absolutely void, and open to collateral attack by the owner of property which it is sought to subject to the burden of bonds which the *de facto* district has assumed to issue.

This question arose upon the ruling of the Court (*Record* p. 270) overruling the objection to the introduction in evidence of the second paragraph (*Record* p. 223) of the stipulation of facts. This evidence was offered by plaintiff, and was objected to on the ground, among others, that it did not tend to prove the *de jure* existence of the district, and that evidence of its *de facto* character was incompetent, immaterial and irrelevant.

The question arose also upon the above mentioned ruling of the Court sustaining plaintiff's objection to the introduction in evidence of the 14th paragraph of the stipulation of facts, and the "Exhibit C" annexed thereto, which rejected evidence was such as to show that no valid notice of the hearing of the petition for the formation of the district had ever been given.

6. The decree in the so-called confirmation proceeding declaring valid the organization of the district and the bonds issued by the district, cannot so bind and conclude the plaintiffs in error as to preclude an inquiry in the case at bar as to whether due notice of the hearing of the petition for the formation of the district was

given. These confirmation proceedings were not intended to be conclusive of the rights of landowners or of any other parties. Such is the proper construction of the statute which provides for the proceedings in question, and to construe it as providing for a decree which shall be conclusive of the rights of landowners within the district, either as an adjudication or as evidence, would be to render it obnoxious to the objection of being in conflict with the provisions of the XIVth amendment to the constitution of the United States that no state shall deprive any person of property without due process of law. The statute does not provide for such notice to the landowner of the confirmation proceeding as would amount to due process of law, if the decree in the proceeding were intended to operate as an adjudication of the landowner's rights.

Moreover, if the intention of the state legislature was to make the decree in a confirmation proceeding conclusive of the rights of landowners, the statute is in contravention to the provision of the XIVth amendment to the constitution of the United States that no state shall deny to any person within its jurisdiction the equal protection of the laws, and is also in conflict with the prohibition of special legislation found in section 25 of article IV of the constitution of California.

It is not pretended that the confirmation decree can be conclusive of the rights of the bondholder; and, this being so, to make it conclusive of the landowner's rights would be to unwarrantably discriminate against the

latter and in favor of the former. Again, there is no valid ground or reason for denying to the parties to be affected by a confirmation proceeding the method of notification which the laws of California insure to the parties in ordinary civil actions.

These questions arose upon the ruling of the Court (*Record* p. 297) overruling the objection to the introduction in evidence by the plaintiff of copy of the judgment roll in a proceeding entitled, "In the Matter of the Tulare Irrigation District", the same being what is termed a confirmation proceeding of the kind provided for by an Act of the California legislature, approved March 16th, 1889 (Cal. Stats. of 1889, p. 212). The question arose also upon the above mentioned ruling of the Court sustaining the plaintiff's objection to the introduction in evidence of the 14th paragraph of the stipulation of facts, and an exhibit annexed thereto and marked "Exhibit C". The evidence thus rejected was such as to show the insufficiency of the notice of the hearing for the formation of the district, and was admissible notwithstanding any confirmation decree which may have been rendered.

7. The decree of confirmation was without force and void, because, not only does the judgment roll in the confirmation proceeding fail to show affirmatively that the steps necessary to the acquisition of jurisdiction were taken, but, on the contrary, it affirmatively appears that they were not taken. It affirmatively appears that the Court did not, as the statute requires,

adjudge that notice had been given as prescribed by the *statute, and it further* appears upon the face of the roll that an attempt was made to give notice of the filing of the petition for confirmation, in a mode different from that prescribed by the statute. The statute provides that the notice shall be given and published by the Clerk of the Court. The judgment roll shows that the person who posted the notices was a person other than the Clerk, or his deputy, to-wit: the Secretary of the Board of Directors of the district (*Record* p. 282). The record thus shows that the method of giving notice actually adopted was invalid, and as it cannot be presumed that anything else was done in addition to what the record shows, it follows that it appears from the face of the judgment roll that the Court never acquired jurisdiction, and that the confirmatory decree was a nullity.

This question arose upon the above-mentioned ruling of the Court overruling the objection of defendants and intervenors to the introduction in evidence by the plaintiff of the judgment roll above referred to. The question also arose indirectly in connection with the various rulings of the Court (to which we refer specifically under other headings of this statement), excluding evidence offered by plaintiffs in error tending to show fatal defects in the proceedings looking towards the organization of the district and the issuance of the bonds.

8. The decree of confirmation was void, for the reason that neither the petition in the confirmation pro-

ceeding nor the notice of the filing thereof nor the decree itself contained any description or designation of any of the boundaries of the district. Due process of law demands that the territory embraced within the boundaries of the district should be described so as to enable the owners thereof to determine whether they were likely to be affected by the proceeding.

This question arose in the same manner as the question set forth under the next preceding heading.

9. The decree of confirmation cannot operate as an obstacle to the investigation of questions concerning the fatally defective nature of the proceedings leading up to the organization of the district and the issuance of the bonds, for the reason that said decree was vacated and set aside by the Court which rendered it, and was superseded by a later decree of said Court declaring said organization proceedings and said bonds to be null and void.

This question arose upon the ruling of the Court (*Record* p. 412) sustaining plaintiff's objection to the admission in evidence of a certified copy of the judgment roll in the confirmation proceeding, said copy showing, in addition to what appears in the copy of the roll put in evidence by the plaintiff, the steps subsequent to the decree of confirmation, and the later decree by which that decree was superseded (*Record* pp. 398–412).

10. The provision in the Wright Act as amended in

1891 (Cal. Stats. 1891, p. 144), to the effect that no action shall be commenced or maintained, or defense made, affecting the validity of the organization of a district otherwise than within two years after the date of the order declaring the district organized, cannot preclude the plaintiffs in error from showing the fatal defects in the proceedings looking towards the formation of the Tulare district. This statutory provision is an attempt to compel persons already in the possession and enjoyment of their property to resort to legal proceedings in anticipation of future attempts to deprive them of it. As such the provision is invalid as an attempt to deprive persons of property without due process of law. Again, as a special statute of limitation it is in violation of the prohibition of special legislation containing in subdivisions 3rd, 32nd and 33rd of section 25 of article IV of the constitution of California. In the next place, this limitation clause in the amendment to the Wright Act is void because it is not germane to the original Act nor within the scope of its title as required by section 24 of article IV of the constitution of California. Moreover, it has been repealed by a subsequent statute, the Bridgeford Bill (Cal. Stats. 1897, pp. 254–287), which is a complete revision of and substitute for the Wright law, and which contains no such provisions as that above mentioned.

This question arose upon the above-mentioned ruling of the Court overruling the objection to the introduction in evidence of the first twelve paragraphs of the

stipulation of facts. In the 10th paragraph of said stipulation (*Record* p. 227) it is stated that no suit or action was ever brought until after the year 1895, wherein the validity of any of the bonds was in anywise questioned, and this evidence was objected to as incompetent, irrelevant and immaterial. The question also arose in connection with the exclusion by the Court of the evidence offered by plaintiffs in error tending to show the fatal defects in the proceedings looking towards the formation of the district and the issuance of bonds.

11. The attempted organization of the district was void, because the order of the Board of Supervisors so defined its boundaries as to make the district consist of four separate, non-contiguous tracts of land, contrary to the provision of the statutes authorizing the formation of irrigation districts.

This question arose upon the ruling of the Court (*Record* p. 300) sustaining plaintiff's objection to the admission in evidence of the 16th paragraph (*Record* p. 237) of the stipulation of facts and the exhibit attached thereto marked "Exhibit E" (*Record* p. 262). This evidence showed the exact terms of the order entered on the minutes of the Board of Supervisors and purporting to establish the district and define its boundaries.

12. There was no evidence whatever to sustain or justify the general finding in favor of the plaintiff. The evidence introduced by him was not such as to show the *de jure* existence of the district, and such a showing

was essential and could not be supplied by proof of the existence of the district as a *de facto* corporation.

This question arose upon the motion of the defendant and intervenors that the findings in favor of plaintiff be vacated and findings in favor of the defendant and intervenors substituted for them (*Record* p. 421).

CALIFORNIA STATUTES INVOLVED.

CONSTITUTION OF CALIFORNIA, Art. IV, Secs. 24 and 25.

"*Titles of acts—Amendment of Statutes.*

"SEC. 24. Every act shall embrace but one subject, "which subject shall be expressed in its title. But if "any subject shall be embraced in an act which shall not "be expressed in its title, such act shall be void only as "to so much thereof as shall not be expressed in its "title. No law shall be revised or amended by refer- "ence to its title; but in such case the act revised or "section amended shall be re-enacted and published at "length as revised or amended; and all laws of the state "of California, and all official writings, and the exe- "cutive, legislative, and judicial proceedings, shall be "conducted, preserved, and published in no other than "the English language.

"*Local and special legislation.*

"SEC. 25. The legislature shall not pass local or "special laws in any of the following enumerated cases, "that is to say:

"*First*—Regulating the jurisdiction and duties of "justices of the peace, police judges, and of constables.

"*Second*—For the punishment of crimes and mis- "demeanors.

"*Third*—Regulating the practice of courts of justice.

"*Fourth*—Providing for changing the venue in civil "or criminal actions.

"*Fifth*—Granting divorces.

"*Sixth*—Changing the names of persons or places.

"*Seventh*—Authorizing the laying out, opening, "altering, maintaining, or vacating roads, highways, "streets, alleys, town plats, parks, cemeteries, grave- "yards, or public grounds not owned by the state.

"*Eighth*—Summoning and impaneling grand and "petit juries, and providing for their compensation.

"*Ninth*—Regulating county and township business, "or the election of county and township officers.

"*Tenth*—For the assessment or collection of taxes.

"*Eleventh*—Providing for conducting elections, or "designating the places of voting, except on the organ- "ization of new counties.

"*Twelfth*—Affecting estates of deceased persons, "minors, or other persons under legal disabilities.

"*Thirteenth*—Extending the time for the collection "of taxes.

"*Fourteenth*—Giving effect to invalid deeds, wills, or "other instruments.

"*Fifteenth*—Refunding money paid into the state "treasury.

" *Sixteenth*—Releasing or extinguishing, in whole or " in part, the indebtedness, liability, or obligation of any " corporation or person to this state, or to any muni- " cipal corporation therein.

" *Seventeenth*—Declaring any person of age, or auth- " orizing any minor to sell, lease, or encumber his or " her property.

" *Eighteenth*—Legalizing, except as against the state, " the unauthorized or invalid act of any officer.

" *Nineteenth*—Granting to any corporation, associa- " tion, or individual any special or exclusive right, " privilege, or immunity.

" *Twentieth*—Exempting property from taxation.

" *Twenty-first*—Changing county seats.

" *Twenty-second*—Restoring to citizenship persons " convicted of infamous crimes.

" *Twenty-third*—Regulating the rate of interest on " money.

" *Twenty-fourth*—Authorizing the creation, exten- " sion, or impairing of liens.

" *Twenty-fifth*—Chartering or licensing ferries, " bridges, or roads.

" *Twenty-sixth*—Remitting fines, penalties, or for- " feitures.

" *Twenty-seventh*—Providing for the management of " common schools.

" *Twenty-eighth*—Creating offices, or prescribing the " powers and duties of officers in counties, cities, cities " and counties, townships, election or school districts.

" *Twenty-ninth*—Affecting the fees or salary of any " officer.

" *Thirtieth*—Changing the law of descent or suc- " cession.

" *Thirty-first*—Authorizing the adoption or legitima- " tion of children.

" *Thirty-second*—For limitation of civil or criminal " actions.

" *Thirty-third*—In all other cases where a general " law can be made applicable."

THE WRIGHT ACT, Cal. Stats. 1887, pp. 29-45.

(pp. 29–45)

" CHAPTER XXXIV.

" *An Act to provide for the organization and government* " *of irrigation districts, and to provide for the acqui-* " *sition of water and other property, and for the dis-* " *tribution of water thereby for irrigation purposes.*

" [Approved March 7, 1887.]

" *The People of the State of California, represented in* " *Senate and Assembly, do enact as follows:*

" SECTION 1. Whenever fifty or a majority of free- " holders owning lands susceptible of one mode of irri- " gation from a common source, and by the same sys- " tem of works, desire to provide for the irrigation of " the same, they may propose the organization of an " irrigation district under the provisions of this Act, " and when so organized such district shall have the " powers conferred or that may hereafter be conferred " by law upon such irrigation districts.

" SEC. 2. A petition shall first be presented to the " Board of Supervisors of the county in which the lands " or the greatest portion thereof is situated, signed by " the required number of freeholders of such pro- " posed district, which petition shall set forth and " particularly describe the proposed boundaries of such " district, and shall pray that the same may be organ- " ized under the provisions of this Act. The petitioners " must accompany the petition with a good and sufficient " bond, to be approved by the said Board of Supervisors, " in double the amount of the probable cost of organiz- " ing such district, conditioned that the bondsmen will " pay all said cost in case said organization shall not " be effected. Such petition shall be presented at a " regular meeting of the said Board, and shall be pub- " lished for at least two weeks before the time at which " the same is to be presented, in some newspaper " printed and published in the county where said " petition is presented, together with a notice stating " the time of the meeting at which the same will be " presented. When such petition is presented, the said " Board of Supervisors shall hear the same, and may " adjourn such hearing from time to time, not exceed- " ing four weeks in all; and on the final hearing may " make such changes in the proposed boundaries as " they may find to be proper, and shall establish and " define such boundaries; *provided*, that said Board shall " not modify said boundaries so as to except from the " operation of this Act any territory within the bound-

" aries of the district proposed by said petitioners,
" which is susceptible of irrigation by the same system
" of works applicable to the other lands in such pro-
" posed district, nor shall any lands which will not in
" the judgment of the said Board, be benefited by irri-
" gation by said system be included within such dis-
" trict; *provided*, that any person whose lands are sus-
" ceptible of irrigation from the same source shall, upon
" application of the owner to said Board, be entitled to
" have such lands included in said district. Said board
" shall also make an order dividing said district into
" five divisions, as nearly equal in size as may be prac-
" ticable, which shall be numbered First, Second,
" Third, Fourth, and Fifth, and one Director shall be
" elected from each district. Said Board of Supervisors
" shall then give notice of an election to be held in such
" proposed district, for the purpose of determining
" whether or not the same shall be organized under the
" provisions of this Act. Such notice shall describe
" boundaries so established, and shall designate a name
" for such proposed district, and said notice shall be
" published for at least three weeks prior to such elec-
" tion in a newspaper published within said county; and
" if any portion of such proposed district lie within
" another county or counties, then said notice shall be
" published in a newspaper published within each of
" said counties. Such notice shall require the electors
" to cast ballots which shall contain the words, 'Irriga-
" 'tion District—Yes'; or, 'Irrigation District—No,' or

" words equivalent thereto; and also the names of per-
" sons to be voted for to fill the various elective offices
" hereinafter prescribed. No person shall be entitled
" to vote at any election held under the provisions of
" this Act unless he shall possess all the qualifications
" required of electors under the general election laws of
" this State.

" SEC. 3. Such election shall be conducted in accord-
" ance with the general election laws of the State, pro-
" vided that no particular form of ballot shall be re-
" quired. The said Board of Supervisors shall meet on
" the second Monday next succeeding such election,
" and proceed to canvass the votes cast thereat; and if
" upon such canvass it appear that at least two-thirds
" of all the votes cast are 'Irrigation District—Yes,'
" the said Board shall, by an order entered on their
" minutes, declare such territory duly organized as an
" irrigation district, under the name and style thereto-
" fore designated, and shall declare the persons receiv-
" ing, respectively, the highest number of votes for
" such several offices to be duly elected to such offices.
" Said Board shall cause a copy of such order, duly
" certified, to be immediately filed for record in the of-
" fice of the County Recorder of each county in which
" any portion of such lands are situated, and must also
" immediately forward a copy thereof to the Clerk of
" the Board of Supervisors of each of the counties in
" which any portion of the district may lie; and no
" Board of Supervisors of any county, including any

" portion of such district, shall, after the date of the " organization of such district, allow another district to " be formed including any of the lands in such district, " without the consent of the Board of Directors thereof; " and from and after the date of such filing, the organ- " ization of such district shall be complete, and the " officers thereof shall be entitled to enter immediately " upon the duties of their respective offices, upon qual- " ifying in accordance with law, and shall hold such " offices repectively, until their successors are elected " and qualified. For the purposes of the election above " provided for, the said Board of Supervisors must es- " tablish a convenient number of election precincts in " said proposed district, and define the boundaries " thereof, which said precincts may thereafter be " changed by the Board of Directors of such district.

" SEC. 4. An election shall be held in such district " on the first Wednesday in April, eighteen hundred " and eighty-eight, and on the first Wednesday in " April in each second year thereafter, at which an " Assessor, a Collector, and a Treasurer, and a Board of " five Directors for the district shall be elected. The per- " son receiving the highest number of votes for any office " to be filled at such election is elected thereto. Within " ten days after receiving their certificates of election, " hereinafter provided for, said officers shall take and " subscribe the official oath and file the same in the " office of the Board of Directors. The Assessor shall " execute an official bond in the sum of ten thousand

" dollars, and the Collector an official bond in the sum " of twenty thousand dollars, and the district Treasurer " an official bond in the sum of fifty thousand dollars; " each of said bonds to be approved by the Board of " Directors; and each member of said Board of Directors " shall execute an official bond in the sum of twenty- " five thousand dollars, which said bonds shall be ap- " proved by the Judge of the Superior Court of said " county where such organization was effected, and " shall be recorded in the office of the County Recorder " thereof, and filed with the Secretary of said Board. " All official bonds herein provided for shall be in the " form prescribed by law for the official bonds of county " officers.

" SEC. 5. Fifteen days before any election held " under this Act, subsequent to the organization of any " district, the Secretary of the Board of Directors shall " cause notices to be posted in three public places in " each election precinct, of the time and place of hold- " ing the election, and shall also post a general notice " of the same in the office of said Board, which shall be " established and kept at some fixed place to be deter- " mined by said Board, specifying the polling places of " each precinct. Prior to the time for posting the no- " tices, the Board must appoint for each precinct, from " the electors thereof, one inspector and two Judges, who " shall constitute a Board of Election for such precinct. " If the Board fail to appoint a Board of Election, or " the members appointed do not attend at the opening

" of the polls on the morning of election, the electors of " the precinct present at that hour may appoint the " Board, or supply the place of an absent member " thereof. The Board of Directors must, in its order ap- " pointing the Board of Election designate the house or " place within the precinct where the election must be " held.

" SEC. 6. The Inspector is Chairman of the Election " Board and may—

" *First*—Administer all oaths required in the pro- " gress of an election.

" *Second*—Appoint Judges and Clerks if, during the " progress of the election, any Judge or Clerk cease to " act. Any member of the Board of Election, or " any Clerk thereof, may administer and certify " oaths required to be administered during the progress " of an election. The Board of Election for each pre- " cinct must, before opening the polls, appoint two per- " sons to act as Clerks of the election. Before opening " the polls, each member of the Board and each Clerk " must take and subscribe an oath to faithfully perform " the duties imposed upon them by law. Any elector " of the precinct may administer and certify such oath. " The polls must be opened one hour after sunrise on " the morning of the election, and be kept open until " sunset, when the same must be closed. The pro- " visions of the Political Code concerning the form of " ballots to be used shall not apply to elections under " held this Act.

"SEC. 7. Voting may commence as soon as the "polls are opened, and may be continued during all the "time the polls remain opened, and shall be conducted "as nearly as practicable in accordance with the pro- "visions of chapter nine of title two of part three of "the Political Code of this State. As soon as the "polls are closed, the Judges shall open the ballot-box "and commence counting the votes; and in no case "shall the ballot-box be removed from the room in "which the election is held until all the ballots have "been counted. The counting of ballots shall in all "cases be public. The ballots shall be taken out one "by one, by the Inspector or one of the Judges, who "shall open them and read aloud the names of each "person contained therein, and the office for which "every such person is voted for. Each Clerk shall "write down each office to be filled, and the name of "each person voted for for such office, and shall keep "the number of votes by tallies, as they are read aloud "by the Inspector or Judge. The counting of votes "shall be continued without adjournment until all "have been counted.

"SEC. 8. As soon as all the votes are read off and "counted, a certificate shall be drawn up on each of "the papers containing the poll list and tallies, or "attached thereto, stating the number of votes each one "voted for has received, and designating the office to "fill which he was voted for, which number shall be "written in figures and in words at full length. Each

" certificate shall be signed by the Clerk, Judge, and the " Inspector. One of said certificates, with the poll list " and the tally paper to which it is attached, shall be " retained by the Inspector, and preserved by him at " least six months. The ballots shall be strung upon " a cord or thread by the Inspector, during the count- " ing thereof, in the order in which they are entered " upon the tally list by the Clerks; and said ballots, " together with the other of said certificates, with the " poll list and tally paper to which it is attached, shall " be sealed by the Inspector in the presence of the " Judges and Clerks, and indorsed 'Election Returns " 'of (naming the precinct) Precinct,' and be directed to " the Secretary of the Board of Directors, and shall be " immediately delivered by the Inspector, or by some " other safe and responsible carrier designated by said " Inspector, to said Secretary, and the ballots shall be " kept unopened for at least six months, and if any " person be of the opinion that the vote of any pre- " cinct has not been correctly counted, he may appear " on the day appointed for the Board of Directors to " open and canvass the returns, and demand a recount " of the vote of the precinct that is so claimed to have " been incorrectly counted.

" SEC. 9. No list, tally paper, or certificate returned " from any election, shall be set aside or rejected for " want of form, if it can be satisfactorily understood. " The Board of Directors must meet at its usual place " of meeting on the first Monday after each election to

" canvass the returns. If, at the time of meeting, the " returns from each precinct in the district in which " the polls were opened have been received, the Board " of Directors must then and there proceed to canvass " the returns, but if all the returns have not been re- " ceived, the canvass must be postponed from day to " day until all the returns have been received, or until " six postponements have been had. The canvass must " be made in public and by opening the returns and " estimating the vote of the district, for each person " voted for, and declaring the result thereof.

" SEC. 10. The Secretary of the Board of Directors " must, as soon as the result is declared, enter in the " records of such Board, a statement of such result, " which statement must show:

" *First*—The whole number of votes cast in the " district.

" *Second*—The names of the persons voted for.

" *Third*—The office to fill which each person was " voted for.

" *Fourth*—The number of votes given in each pre- " cinct to each of such persons.

" *Fifth*—The number of votes given in the district " to each of such persons.

" The Board of Directors must declare elected the " person having the highest number of votes given for " each office to be filled by the votes of the district. " The Secretary must immediately make out and de- " liver to such person a certificate of election signed

" by him and authenticated with the seal of the Board. " In case of a vacancy in the office of Assessor, Tax " Collector, or Treasurer, the vacancy shall be filled by " appointment by the Board of Directors. In case of " a vacancy in the office of member of the Board of " Directors, the vacancy shall be filled by appointment " by the Board of Supervisors of the county where the " office of such Board is situated. An officer appointed " as above provided, shall hold his office until the next " regular election for said district, and until his suc- " cessor is elected and qualified.

" SEC. 11. On the first Wednesday in May next " following their election the Board of Directors shall " meet and organize as a Board, elect a President from " their number, and appoint a Secretary. The Board " shall have the power, and it shall be their duty, to " manage and conduct the business and affairs of the " district, make and execute all necessary contracts, " employ and appoint such agents, officers and em- " ployes as may be required, and prescribe their duties, " establish equitable by-laws, rules, and regulations for " the distribution and use of water among the owners " of said lands, and generally to perform all such acts " as shall be necessary to fully carry out the purposes " of this Act. The said by-laws, rules, and regulations " must be printed in convenient form for distribution " in the district. And it is hereby expressly pro- " vided that all waters distributed for irrigation pur- " poses shall be apportioned ratably to each land

" owner upon the basis of the ratio which the last " assessment of such owner for district purposes within " said district bears to the whole sum assessed upon " the district; *provided*, that any land owner may as- " sign the right to the whole or any portion of the " waters so apportioned to him.

" SEC. 12. The Board of Directors shall hold a regu- " lar monthly meeting, in their office, on the first Tues- " day in every month, and such special meetings as " may be required for the proper transaction of busi- " ness; *provided*, that all special meetings must be " ordered by a majority of the Board; the order must " be entered of record, and five days' notice thereof " must, by the Secretary, be given to each member not " joining in the order. The order must specify " the business to be transacted, and none other than " that specified must be transacted at such special " meeting. All meetings of the Board must be pub- " lic, and three members shall constitute a quorum for " the transaction of business, but on all questions re- " quiring a vote, there shall be a concurrence of at " least three members of said Board. All records of " the Board shall be open to the inspection of any " elector during business hours. The Board, and its " agents and employes, shall have the right to enter " upon any land in the district to make surveys, and " may locate the line for any canal or canals, and the " necessary branches for the same, on any of said " lands which may be deemed best for such location.

"Said Board shall also have the right to acquire, either "by purchase or condemnation, all lands and waters, "and other property necessary for the construction, use, "supply, maintenance, repair, and improvement of said "canal or canals and works, including canals and works "constructed and being constructed by private owners, "lands for reservoirs, for the storage of needful waters, "and all necessary appurtenances. In case of pur- "chase, the bonds of the district, hereinafter provided "for, may be used at their par value in payment; and in "case of condemnation, the Board shall proceed, in the "name of the district, under the provisions of title "seven, of part three, of the Code of Civil Procedure. "Said Board may also construct the necessary dams, "reservoirs, and works for the collection of water for "said district, and do any and every lawful act neces- "sary to be done, that sufficient water may be fur- "nished to each land owner in said district for irriga- "tion purposes. The use of all water required for the "irrigation of the lands of any district formed under "the provisions of this Act, together with the rights "of way for canals and ditches, sites for reservoirs, and "all other property required in fully carrying out the "provisions of this Act, is hereby declared to be a "public use, subject to the regulation and control of "the State, in the manner prescribed by law.

"SEC. 13. The legal title to all property acquired "under the provisions of this Act shall immediately "and by operation of law vest in such irrigation dis-

" trict, and shall be held by such district in trust for " and is hereby dedicated and set apart to the uses " and purposes set forth in this Act. And said Board " is hereby authorized and empowered to hold, use, " acquire, manage, occupy, and possess said property " as herein provided.

" SEC. 14. The said Board is hereby authorized and " empowered to take conveyances or other assurances " for all property acquired by it under the provisions " of this Act, in the name of such irrigation district, " to and for the uses and purposes herein expressed, " and to institute and maintain any and all actions " and proceedings, suits at law or in equity, necessary " or proper in order to fully carry out the provisions " of this Act, or to enforce, maintain, protect, or pre- " serve any and all rights, privileges, and immunities " created by this Act or acquired in pursuance thereof. " And in all Courts, actions, suits, or proceedings, " the said Board may sue, appear, and defend, in " person or by attorneys, and in the name of such " irrigation district.

" SEC. 15. For the purpose of constructing neces- " sary irrigating canals and works and acquiring the " necessary property and rights therefor, and otherwise " carrying out the provisions of this Act, the Board of " Directors of any such district must, as soon after " such district has been organized as may be practi- " cable, estimate and determine the amount of money " necessary to be raised, and shall immediately there-

" upon call a special election, at which shall be sub-
" mitted to the electors of such district possessing the
" qualifications prescribed by this Act, the question
" whether or not the bonds of said district shall be
" issued in the amount so determined. Notice of such
" election must be given by posting notices in three
" public places in each election precinct in said district
" for at least twenty days, and also by publication of
" such notice in some newspaper published in the
" county, where the office of the Board of Directors of
" such district is required to be kept, once a week for
" at least three successive weeks. Such notices must
" specify the time of holding the election, the amount
" of bonds proposed to be issued, and said election
" must be held and the result thereof determined and
" declared, in all respects as nearly as practicable, in
" conformity with the provisions of this Act govern-
" ing the election of officers; *provided*, that no infor-
" malities in conducting such an election shall invali-
" date the same, if the election shall have been other-
" wise fairly conducted. At such election the ballots
" shall contain the words, 'Bonds—Yes,' or 'Bonds—
" No,' or words equivalent thereto. If a majority of
" the votes cast are 'Bonds—Yes,' the Board of Direc-
" tors shall immediately cause bonds in said amount to
" be issued; said bonds shall be payable in gold coin
" of the United States, in installments as follows, to
" wit: At the expiration of eleven years not less than
" five per cent of said bonds; at the expiration of

" twelve years not less than six per cent; at the expira-
" tion of thirteen years not less than seven per cent;
" at the expiration of fourteen years not less than eight
" per cent; at the expiration of fifteen years not less
" than nine per cent; at the expiration of sixteen years
" not less than ten per cent; at the expiration of seven-
" teen years not less than eleven per cent; at the ex-
" piration of eighteen years not less than thirteen per
" cent; at the expiration of nineteen years not less than
" fifteen per cent; and for the twentieth year a percent-
" age sufficient to pay off said bonds; and shall bear in-
" terest at the rate of six per cent per annum, payable
" semi-annually on the first day of January and July of
" each year. The principal and interest shall be pay-
" able at the office of the Treasurer of the district.
" Said bonds shall be each of the denomination of not
" less than one hundred dollars, nor more than five
" hundred dollars, shall be negotiable in form, signed
" by the President and Secretary, and the seal of the
" Board of Directors shall be affixed thereto. They
" shall be numbered consecutively as issued, and bear
" date at the time of their issue. Coupons for the in-
" terest shall be attached to each bond signed by the
" Secretary. Said bonds shall express on their face
" that they were issued by authority of this Act,
" stating its title and date of approval. The Secre-
" tary shall keep a record of the bonds sold, their num-
" ber, the date of sale, the price received, and the name
" of the purchaser.

"SEC. 16. The Board may sell said bonds from time "to time, in such quantities as may be necessary and "most advantageous, to raise money for the construc- "tion of said canals and works, the acquisition of said "property and rights, and otherwise to fully carry out "the objects and purposes of this Act. Before making "any sale the Board shall, at a meeting, by resolution, "declare its intention to sell a specified amount of "the bonds, and the day and hour and place of such "sale, and shall cause such resolution to be entered in "the minutes, and notice of the sale to be given, by "publication thereof at least twenty days, in a daily "newspaper published in each of the Cities of San "Francisco, Sacramento, and Los Angeles, and in any "other newspaper, at their discretion. The notice "shall state that sealed proposals will be received by "the Board, at their office, for the purchase of the "bonds, till the day and hour named in the resolution. "At the time appointed the Board shall open the "proposals, and award the purchase of the bonds to "the highest responsible bidder, and may reject all "bids; but said Board shall in no event sell any of the "said bonds for less than ninety per cent of the face "value thereof.

"SEC. 17. Said bonds, and the interest thereon, shall "be paid by revenue derived from an annual assess- "ment upon the real property of the district; and all "the real property in the district shall be and remain "liable to be assessed for such payments as herein-

" after provided.

" SEC 18. The Assessor must, between the first Mon-
" day in March and the first Monday in June, in each
" year, assess all real property in the district, to the
" persons who own, claim, have the possession or con-
" trol thereof, at its full cash value. He must prepare
" an assessment book, with appropriate headings, in
" which must be listed all such property within the
" district, in which must be specified, in separate
" columns, under the appropriate head:

" *First*—The name of the person to whom the prop-
" erty is assessed. If the name is not known to the
"Assessor, the property shall be assessed to 'Unknown
" 'Owners.'

" *Second*—Land by township, range, section, or frac-
" tional section, and when such land is not a con-
" gressional division or subdivision, by metes and
" bounds, or other description sufficient to identify it,
" giving an estimate of the number of acres, locality,
" and the improvements thereon.

" *Third*—City and town lots, naming the city or
" town, and the number and block according to the
" system of numbering in such city or town, and the
" improvements thereon.

" *Fourth*—The cash value of real estate, other than
" city or town lots.

" *Fifth*—The cash value of improvements on such
" real estate.

" *Sixth*—The cash value of city and town lots.

"*Seventh*—The cash value of improvements on city "and town lots.

"*Eighth*—The cash value of improvements on real "estate assessed to persons other than the owners of "the real estate.

"*Ninth*—The total value of all property assessed.

"*Tenth*—The total value of all property after equali- "zation by the Board of Directors.

"*Eleventh*—Such other things as the Board of Di- "rectors may require.

"SEC. 19. The Board of Directors must allow the "Assessor as many deputies, to be appointed by him, as "will, in the judgment of the Board, enable him to "complete the assessment within the time herein pre- "scribed. The Board must fix the compensation of "such deputies, which shall be paid out of the Treas- "ury of the district. The compensation must not ex- "ceed five dollars per day for each deputy, for the time "actually engaged, nor must any allowance be made "but for work done between the first Monday in "March and the first Monday in August in each "year.

"SEC. 20. On or before the first Monday in August "in each year the Assessor must complete his assess- "ment book, and deliver it to the Secretary of the "Board, who must immediately give notice thereof, "and of the time the Board of Directors, acting as a "Board of Equalization, will meet to equalize assess- "ments, by publication in a newspaper published in

'each of the counties comprising the district. The
'' time fixed for the meeting shall not be less than
" twenty nor more than thirty days from the first pub-
" lication of the notice; and in the meantime the assess-
" ment book must remain in the office of the Secretary
' for the inspection of all persons interested.

" SEC. 21. Upon the day specified in the notice re-
" quired by the preceding section for the meeting, the
" Board of Directors, which is hereby constituted a
" Board of Equalization for that purpose, shall meet
" and continue in session from day to day, as long as
" may be necessary, not to exceed ten days, exclusive
" of Sundays, to hear and determine such objections to
" the valuation and assessment as may come before
" them; and the Board may change the valuation as
" may be just. The Secretary of the Board shall be
" present during its sessions, and note all changes made
" in the valuation of property, and in the names of the
" persons whose property is assessed; and within ten
" days after the close of the session he shall have the
" total values, as finally equalized by the Board, ex-
" tended into columns and added.

" SEC. 22. The Board of Directors shall then levy
" an assessment sufficient to raise the annual interest
" on the outstanding bonds; and at the expiration of
" ten years after the issuing of bonds by the Board,
" must increase said assessment, for the ensuing ten
" years, in the following percentage of the principal of
" the whole amount of bonds then outstanding, to-wit:

" For the eleventh year, five per cent; for the twelfth " year, six per cent; for the thirteenth year, seven per " cent; for the fourteenth year, eight per cent; for the " fifteenth year, nine per cent; for the sixteenth year, " ten per cent; for the seventeenth year, eleven per " cent; for the eighteenth year, thirteen per cent; for " the nineteenth year, fifteen per cent; and for the " twentieth year, a percentage sufficient to pay off said " bonds. The Secretary of the Board must compute ' and enter in a separate column of the assessment book " the respective sums in dollars and cents to be paid as " an assessment on the property therein enumerated. " When collected the assessment shall be paid into the " district Treasury, and shall constitute a special fund " to be called the 'Bond Fund of (naming the district) " Irrigation District.'

" SEC. 23. The assessment upon real property is a " lien against the property assessed, from and after the " first Monday in March for any year; and such lien is " not removed until the assessments are paid or the " property sold for the payment thereof.

" SEC. 24. On or before the first day of November, " the Secretary must deliver the assessment book to " the Collector of the district, who shall, within twenty " days, publish a notice in a newspaper published in " each of the counties comprising the district, if there " be lands situated in more than one county in such " district, that said assessments are due and payable " and will become delinquent at six o'clock P. M. on the

" last Monday of December next thereafter; and that " unless paid prior thereto, five per cent will be added " to the amount thereof, and also the time and place " at which payment of assessments may be made. The " notice shall also specify a time and place within each " election precinct of the district, when and where the " Collector will attend to receive payment of assess- " ments, and shall be published for fifteen days, and a " printed copy of said notice shall be posted for the " same time in some public place in each precinct. " The Collector must attend at the time and place " specified in the notice, to receive assessments, which " must be paid in gold and silver coin; he must mark " the date of payment of any assessment in the assess- " ment book opposite the name of the person paying, " and give a receipt to such person, specifying the " amount of the assessment and the amount paid, with " a description of the property assessed. On the thirty- " first day of December of each year, all unpaid assess- " ments are delinquent, and thereafter the Collector " must collect thereon, for the use of the district, an " addition of five per cent.

" SEC. 25. On or before the first day of February, " the Collector must publish the delinquent list, which " must contain the names of the persons and a descrip- " tion of the property delinquent, and the amount of the " assessments and costs due opposite each name and " description. He must append to and publish with " the delinquent list a notice, that unless the assess-

"ments delinquent, together with costs and per-
"centage, are paid, the real property upon which such
"assessments are a lien will be sold at public auction.
"The publication must be made once a week for three
"successive weeks, in a newspaper published in each of
"the counties comprised in the district. The publica-
"tion must designate the time and place of sale. The
"time of sale must not be less than twenty-one
"nor more than twenty-eight days from the first pub-
"lication, and the place must be at some point desig-
"nated by the Collector.

"SEC. 26. The Collector must collect, in addition to
"the assessments due on the delinquent list and five
"per cent added, fifty cents on each lot, piece, or tract
"of land separately assessed, one-half of which must
"go to the district and the other to the Collector for
"preparing the list. On the day fixed for the sale, or
"some subsequent day to which he may have post-
"poned it, of which he must give notice, the Collector,
"between the hours of ten o'clock A. M. and three
"o'clock P. M., must commence the sale of the prop-
"erty advertised, commencing at the head of the list
"and continuing alphabetically, or in the numerical
"order of the lots or blocks, until completed. He may
"postpone the day of commencing the sales, or the
"sale from day to day, but the sale must be completed
"within three weeks from the day first fixed.

"SEC. 27. The owner or person in possession of
"any real estate offered for sale for assessments due

" thereon may designate in writing to the Collector " prior to the sale, what portion of the property he " wishes sold, if less than the whole; but if the owner " or possessor does not, then the collector may desig- " nate it, and the person who will take the least quan- " tity of the land, or in case an undivided interest is " assessed, then the smallest portion of the interest, " and pay the assessments and costs due, including two " dollars to the Collector for the duplicate certificate of " sale, is the purchaser. If the purchaser does not " pay the assessments and costs before ten o'clock A. " M. the following day, the property, on next sale day, " before the regular sale, must be resold for the assess- " ments and costs. After receiving the amount of " assessments and costs, the Collector must make out " in duplicate a certificate, dated on the day of sale, " stating (when known) the name of the person " assessed, a description of the land sold, the amount " paid therefor, that it was sold for assessments, giv- " ing the amount and the year of the assessment, and " specifying the time when the purchaser will be en- " titled to a deed. The certificate must be signed by " the Collector, and one copy delivered to the pur- " chaser, and the other filed in the office of the County " Recorder of the county in which the land sold is " situated.

" SEC. 28. The Collector, before delivering any cer- " tificate, must in a book enter a description of the " land sold, corresponding with the description in the

" certificate, the date of the sale, purchasers' names, " and amount paid, regularly number the description " on the margin of the book and put a corresponding " number on each certificate. Such book must be " open to public inspection, without fee, during office " hours, when not in actual use. On filing the cer- " tificate with such County Recorder the lien of the " assessments vests in the purchaser, and is only di- " vested by the payment to him, or to the Collector for " his use, of the purchase money and two per cent per " month from the day of sale until redemption.

" SEC. 29. A redemption of the property sold may " be made by the owner, or any party in interest, " within twelve months from the date of purchase. " Redemption must be made in gold or silver coin, as " provided for the collection of State and county taxes, " and when made to the Collector he must credit the " amount paid to the person named in the certificate, " and pay it, on demand, to the person or his as- " signees. In each report the Collector makes to the " Board of Directors, he must name the person en- " titled to redemption money, and the amount due to " each. On receiving the certificate of sale, the " County Recorder must file it and make an entry in " a book similar to that required of the Collector. " On the presentation of the receipt of the person " named in the certificate, or of the Collector, for his " use, of the total amount of the redemption money, " the Recorder must mark the word 'Redeemed,' the

" date, and by whom redeemed, on the certificate and " on the margin of the book where the entry of the " certificate is made. If the property is not redeemed " within twelve months from the sale, the Collector, or " his successor in office, must make to the purchaser, or " his assignee, a deed of the property, reciting in the " deed substantially the matters contained in the cer- " tificate, and that no person redeemed the property " during the time allowed by law for its redemption. " The Collector shall receive from the purchaser, for " the use of the district, two dollars for making such " deed.

" SEC. 30. The matter recited in the certificate of " sale must be recited in the deed, and such deed duly " acknowledged or proved is prima facie evidence that:

" *First*—The property was assessed as required by " law.

" *Second*—The property was equalized as required by " law.

" *Third*—That the assessments were levied in ac- " cordance with law.

" *Fourth*—The assessments were not paid.

" *Fifth*—At a proper time and place the property " was sold as prescribed by law, and by the proper " officer.

" *Sixth*—The property was not redeemed.

" *Seventh*.—The person who executed the deed was " the proper officer.

" Such deed duly acknowledged or proved is (except

" as against actual fraud) conclusive evidence of the " regularity of all the proceedings from the assessment " by the Assessor, inclusive, up to the execution of " the deed. The deed conveys to the grantee the abso- " lute title to the lands described therein free of all " incumbrances, except when the land is owned by " the United States or this State, in which case it is " prima facie evidence of the right of possession.

" SEC. 31. The assessment book or delinquent list, " or a copy thereof, certified by the Collector, showing " unpaid assessments against any person or property, " is prima facie evidence of the assessment, the prop- " erty assessed, the delinquency, the amount of assess- " ments due and unpaid, and that all the forms of the " law in relation to the assessment and levy of such " assessments have been complied with.

" SEC. 32. When land is sold for assessments cor- " rectly imposed, as the property of a particular person, " no misnomer of the owner or supposed owner, or " other mistake relating to the ownership thereof, " affects the sale or renders it void or voidable.

" SEC. 33. On the first Monday in each month the " Collector must settle with the Secretary of the Board " for all moneys collected for assessments, and pay the " same over to the Treasurer; and within six days " thereafter he must deliver to and file in the office of " the Secretary a statement under oath showing:

" *First*—An account of all his transactions and re- " ceipts since his last settlement.

" *Second*—That all money collected by him as Col-
" lector has been paid.

" The Collector shall also file in the office of the Sec-
" retary on said first Monday in each month, the re-
" ceipt of the Treasurer for the money so paid.

" SEC. 34. Upon the presentation of the coupons due
" to the Treasurer, he shall pay the same from said
" Bond Fund. Whenever after ten years from the
" issuance of said bonds, said fund shall amount to the
" sum of ten thousand dollars, the Board of Directors
" may direct the Treasurer to pay such an amount of
" said bonds not due as the money in said fund will
" redeem, at the lowest value at which they may be
" offered for liquidation, after advertising for at least
" four weeks in some daily newspaper in each of the
" cities hereinbefore named, and in any other news-
" paper which said Board may deem advisable, for
" sealed proposals for the redemption of said bonds.
" Said proposals shall be opened by the Board in open
" meeting, at a time to be named in the notice, and the
" lowest bid for said bonds must be accepted; *provided*,
" that no bond shall be redeemed at a rate above par.
" In case the bids are equal, the lowest numbered bond
" shall have the preference. In case none of the hold-
" ers of said bonds shall desire to have the same re-
" deemed, as herein provided for, said money shall be in-
" vested by the Treasurer, under the direction of the
" Board, in United States gold-bearing bonds, or the
" bonds of the State, which shall be kept in said 'Bond

" 'Fund,' and may be used to redeem said district bonds " whenever the holders thereof may desire.

" SEC. 35. After adopting a plan of said canal or " canals, storage, reservoirs, and works, the Board of " Directors shall give notice by publication thereof not " less than twenty days in one newspaper published in " each of the counties composing the district, provided " a newpaper is published therein, and in such other " newspapers as they may deem advisable, calling for " bids for the construction of said work, or of any por- " tion thereof; if less than the whole work is advertised, " then the portion so advertised must be particularly " described in such notice; said notice shall set " forth that plans and specifications can be seen at " the office of the Board, and that the Board will receive " sealed proposals therefor, and that the contract will be " let to the lowest responsible bidder, stating the time " and place for opening said proposals, which at the " time and place appointed shall be opened in public, " and as soon as convenient thereafter the Board shall " let said work, either in portions or as a whole, to the " lowest responsible bidder, or they may reject any or " all bids and readvertise for proposals, or may proceed " to construct the work under their own superintend- " ence with the labor of the residents of the district. " Contracts for the purchase of material shall be " awarded to the lowest responsible bidder. Any per- " son or persons to whom a contract may be awarded " shall enter into a bond, with good and sufficient sur-

" eties, to be approved by the Board, payable to said " district for its use, for double the amount of the con- " tract price, conditioned for the faithful performance " of said contract. The work shall be done under the " direction and to the satisfaction of the Engineer, and " be approved by the Board.

" SEC. 36. No claim shall be paid by the Treasurer " until allowed by the Board, and only upon a warrant " signed by the President, and countersigned by the Secre- " tary; *provided*, that the Board may draw from time to " time from the Construction Fund and deposit in the " County Treasury of the county where the office of " the Board is situated, any sum in excess of the sum " of twenty-five thousand dollars. The County Treas- " urer of said county is hereby authorized and required " to receive and receipt for the same, and place the " same to the credit of said district, and he shall be " responsible upon his official bond for the safe keeping " and disbursement of the same, as in this Act provided. " He shall pay out the same, or any portion thereof, to " the Treasurer of the district only, and only upon the " order of the Board, signed by the President and at- " tested by the Secretary. The said County Treasurer " shall report in writing, on the second Monday in " each month, the amount of money in the County " Treasury, the amount of receipts for the month pre- " ceding, and the amount or amounts paid out; said " report shall be verified and filed with the Secretary of " the Board. The District Treasurer shall also report

" to the Board, in writing, on the first Monday in each " month, the amount of money in the District Treasury, " the amount of receipts for the month preceding, and " the amount and items of expenditures, and said re- " port shall be verified and filed with the Secretary of " the Board.

" SEC. 37. The cost and expense of purchasing and " acquiring property and constructing the works and " improvements herein provided for, shall be wholly " paid out of the Construction Fund. For the purpose " of defraying the expenses of the organization of the " district, and of the care, operation, management, " repair, and improvement of such portions of said " canal and works as are completed and in use, includ- " ing salaries of officers and employes, the Board may " either fix rates of tolls and charges, and collect the same " from all persons using said canal for irrigation and " other purposes, or they may provide for the payment " of said expenditures by a levy of assessments therefor, " or by both said tolls and assessments; if by the latter " method, such levy shall be made on the completion " and equalization of the assessment roll, and the Board " shall have the same powers and functions for the " purposes of said levy as are now possessed by Boards " of Supervisors in this State. The procedure for the " collection of assessments by such levy shall in all " respects conform to the provisions of this Act relat- " ing to the payment of principal and interest of bonds " herein provided for.

"SEC. 38. The Board of Directors shall have "power to construct the said works across any stream "of water, watercourse, street, avenue, highway, rail- "way, canal ditch, or flume which the route of said "canal or canals may intersect or cross, in such man- "ner as to afford security for life and property; but "said Board shall restore the same, when so crossed or "intersected, to its former state as near as may be, or "in a sufficient manner not to have impaired unneces- "sarily its usefulness; and every company whose rail- "road shall be intersected or crossed by said works, "shall unite with said Board in forming said intersec- "tions and crossings, and grant the privileges afore- "said; and if such railroad company and said Board or "the owners and controllers of the said property, thing, "or franchise so to be crossed, cannot agree upon the "amount to be paid therefor, or the points or the man- "ner of said crossings or intersections, the same shall "be ascertained and determined in all respects as here- "in provided in respect to the taking of land. The "right of way is hereby given, dedicated, and set apart, "to locate, construct, and maintain said works over and "through any of the lands which are now, or may be "the property of this State; and also there is given, "dedicated, and set apart, for the uses and purposes "aforesaid, all waters and water rights belonging to "this State within the district.

"SEC. 39. The Board of Directors shall each receive "four dollars per day, and mileage at the rate of twenty

" cents per mile, in attending meetings, and actual and " necessary expenses paid while engaged in official " business under the order of the Board. The Board " shall fix the compensation to be paid to the other " officers named in the Act, to be paid out of the Treas- " ury of the district; *provided*, that said Board shall, " upon the petition of at least fifty, or a majority of the " freeholders within such district therefor, submit to " the electors at any general election a schedule of sal- " aries and fees to be paid hereunder. Such petition " must be presented to the Board twenty days prior to " a general election, and the result of such election " shall be determined and declared in all respects as " other elections are determined and declared under " this Act.

" SEC. 40. No Director or any other officer named " in this Act shall in any manner be interested, directly " or indirectly, in any contract awarded or to be " awarded by the Board, or in the profits to be derived " therefrom; and for any violation of this provision, " such officer shall be deemed guilty of a misdemeanor, " and such conviction shall work a forfeiture of his " office, and he shall be punished by a fine not exceed- " ing five hundred dollars, or by imprisonment in the " county jail not exceeding six months, or by both such " fine and imprisonment.

" SEC. 41. The Board of Directors may, at any time, " when in their judgment it may be advisable, call a " special election, and submit to the qualified electors

" of the district, the question, whether or not a special " assessment shall be levied for the purpose of raising " money to be applied to any of the purposes provided " in this Act. Such election must be called upon the " notice prescribed, and the same shall be held, and the " result thereon determined and declared in all respects " in conformity with the provisions of section fifteen of " this Act. The notice must specify the amount of " money proposed to be raised, and the purpose for " which it is intended to be used. At such elections " the ballots shall contain the words, 'Assessment— " 'Yes,' or 'Assessment—No.' If two thirds of the " votes cast are 'Assessment—Yes,' the Board shall, at " the time of the annual levy hereunder, levy an assess- " ment sufficient to raise the amount voted. The rate " of assessment shall be ascertained by deducting fifteen " per cent for anticipated delinquencies from the aggre- " gate assessed value of the property in the district, as " it appears on the assessment roll for the current year, " and then dividing the sum voted by the remainder of " such aggregate assessed value. The assessments so " levied shall be computed and entered on the assess- " ment roll by the Secretary of the Board, and collected " at the same time and in the same manner as other " assessments provided for herein; and when collected " shall be paid into the District Treasury for the pur- " poses specified in the notice of such special election.

" SEC. 42. The Board of Directors or other officers " of the district, shall have no power to incur any debt

" or liability whatever, either by issuing bonds, or " otherwise, in excess of the express provisions of this " Act, and any debt or liability incurred, in excess of " such express provisions, shall be and remain abso- " lutely void.

" SEC. 43. In case the volume of water in any stream " or river shall not be sufficient to supply the continual " wants of the entire country through which it passes, " and susceptible of irrigation therefrom, then it shall " be the duty of the Water Commissioners, constituted " as hereinafter provided, to apportion, in a just and equit- " able proportion, a certain amount of said water upon " certain or alternate weekly days to different localities, " as they may, in their judgment, think best for the in- " terest of all parties concerned, and with due regard to " the legal and equitable rights of all. Said Water " Commissioners shall consist of the Chairman of the " Board of Directors of each of the districts affected.

" SEC. 44. It shall be the duty of the Board of " Directors to keep the water flowing through the " ditches under their control to the full capacity of " such ditches in times of high water.

" SEC. 45. Navigation shall never in anywise be im- " paired by the operation of this Act, nor shall any vested " interest in or to any mining water rights or ditches, or " in or to any water or water rights, or reservoirs or dams, " now used by the owners or possessors thereof, in con- " nection with any mining industry, or by persons " purchasing or renting the use thereof, or in or to any

" other property now used directly or indirectly in car-
" rying on or promoting the mining industry, ever be
" affected by or taken under its provisions, save and
" except that rights of way may be acquired over the
" same.

" SEC. 46. None of the provisions of this Act shall
" be construed as repealing or in anywise modifying
" the provisions of any other Act relating to the subject
" of irrigation or Water Commissioners. Nothing
" herein contained shall be deemed to authorize any
" person or persons to divert the waters of any river,
" creek, stream, canal, or ditch, from its channel, to the
" detriment of any person or persons having any in-
" terest in such river, creek, stream, canal, or ditch, or
" the waters therein, unless previous compensation be
" ascertained and paid therefor, under the laws of this
" State authorizing the taking of private property for
" public uses.

" SEC. 47. This Act shall take effect immediately."

ACT OF FEB. 16, 1889, Cal. Stats. 1889
(pp. 21-25)

" CHAPTER XXI.

" *An Act amendatory of and supplemental to an Act en-*
" *titled 'An Act to provide for the organization and*
" *'government of irrigation districts, and to provide*
" *'for the acquisition of water and other property,*
" *'and for the distribution of water thereby for*
" *'irrigation purposes,' approved March seventh,*
" *one thousand eight hundred and eighty-seven, pro-*
" *viding for the exclusion of certain lands within*
" *any such district.*

" [Approved February 16, 1889.]

" *The People of the State of California, represented in*
" *Senate and Assembly, do enact as follows:*

" SECTION 1. The boundaries of any irrigation dis-
" trict, now or hereafter organized under the provisions
" of an Act entitled 'An Act to provide for the organiz-
" 'ation and government of irrigation districts, and to
" 'provide for the acquisition of water and other pro-
" 'perty, and for the distribution of water thereby for
" 'irrigation purposes,' approved March seventh, one
" 'thousand eight hundred and eighty-seven, may be
" changed, and tracts of land which were included
" within the boundaries of such district, at or after its
" organization under the provisions of said Act, may be
" excluded therefrom, in the manner herein prescribed;
" but neither such change of the boundaries of the dis-
" trict, nor such exclusion of lands from the district,

" shall impair or affect its organization, or its rights in " or to property, or any of its rights or privileges of " whatever kind or nature; nor shall it affect, impair, " or discharge any contract, obligation, lien, or charge " for or upon which it was or might become liable or " chargeable had such change of its boundaries not " been made, or had not any land been excluded from " the district.

" SEC. 2. The owner or owners in fee of one or " more tracts of land, which constitute a portion of an " irrigation district, may file with the Board of Direc- " tors of the district a petition, praying that such " tracts, and any other tracts contiguous thereto, may " be excluded and taken from said district. The petition " shall describe the boundaries of the land which the " petitioners desire to have excluded from the district, " and also the lands of each of such petitioners, which " are included within such boundaries; but the descrip- " tion of such lands need not be more particular or cer- " tain than is required when the lands are entered in " the assessment book by the County Assessor. Such " petition must be acknowledged in the same manner " and form as is required in case of a conveyance of " land, and the acknowledgment shall have the same " force and effect as evidence as the acknowledgment of " such conveyance.

" SEC. 3. The Secretary of the Board of Directors " shall cause a notice of the filing of such petition to " be published for at least two weeks in some news-

" paper published in the county where the office of the " Board of Directors is situated, and if any portion of " such territory to be excluded lie within another " county or counties, then said notice shall be so pub- " lished in a newspaper published within each of said " counties; or if no newspaper be published therein, " then by posting such notice for the same time in at " least three public places in said district, and, in case " of the posting of said notices, one of said notices must " be so posted on the lands proposed to be excluded. " The notice shall state the filing of such petition; the " names of the petitioners; a description of the lands " mentioned in said petition, and the prayer of said " petition; and it shall notify all persons interested in " or that may be affected by such change of the bound- " aries of the district, to appear at the office of said " Board at a time named in said notice, and show cause " in writing, if any they have, why the change of the " boundaries of said district, as proposed in said peti- " tion, should not be made. The time to be specified " in the notice at which they shall be required to show " cause shall be the regular meeting of the Board next " after the expiration of the time for the publication of " the notice.

" SEC. 4. The Board of Directors, at the time and " place mentioned in the notice, or at the time or times " to which the hearing of said petition may be ad- " journed, shall proceed to hear the petition and all " objections thereto presented in writing by any person

" showing cause as aforesaid why the prayer of said " petition should not be granted. The failure of any " person interested in said district to show cause in " writing why the tract or tracts of land mentioned in " said petition should not be excluded from said dis- " trict, shall be deemed and taken as an assent by him " to the exclusion of such tract or tracts of land, or any " part thereof, from said district; and the filing of such " petition with such Board, as aforesaid, shall be deemed " and taken as an assent by each and all of such " petitioners to the exclusion from such district of the " lands mentioned in the petition, or any part thereof.

" SEC. 5. The Board of Directors, if they deem it " not for the best interest of the district that the lands " mentioned in the petition, or some portion thereof, " should be excluded from said district, shall order that " said petition be denied; but if they deem it for the " best interests of the district that the lands mentioned " in the petition, or some portion thereof, be excluded " from the district, and if no person interested in the " district show cause in writing why the said lands, or " some portion thereof, should not be excluded from " the district, or if, having shown cause, withdraws the " same, and also, if there be no outstanding bonds of " the district, then the Board may order that the lands " mentioned in the petition, or some defined portion " thereof, be excluded from the district.

" SEC. 6. If there be outstanding bonds of the dis- " trict, then the Board may adopt a resolution to the

" effect that the Board deems it to the best interest of " the district that the lands mentioned in the petition, " or some portion thereof, should be excluded from the " district. The resolution shall describe such lands so " that the boundaries thereof can readily be traced. " The holders of such outstanding bonds may give " their assent in writing to the effect that they severally " consent that the Board may make an order by which " the lands mentioned in the resolution may be ex- " cluded from the district. The assent must be " acknowledged by the several holders of such bonds " in the same manner and form as is required in case " of a conveyance of land, and the acknowledgment " shall have the same force and effect as evidence as " the acknowledgment of such conveyance. The assent " shall be filed with the Board and must be recorded in " the minutes of the Board; and said minutes, or a cer- " tified copy thereof, shall be admissible in evidence " with the same effect as the said assent; but if such " assent be not filed, the Board shall deny and dismiss " said petition.

" SEC. 7. If the assent aforesaid of the holders of " said bonds be filed and entered of record as aforesaid, " and if there be objections presented by any person " showing cause as aforesaid, which have not been " withdrawn, then the Board may order an election to " be held in said district, to determine whether an order " shall be made excluding said land from the district " as mentioned in said resolution. The notice of such

" election shall describe the boundary of all lands " which it is proposed to exclude, and such notice shall " be published for at least two weeks prior to such " election in a newspaper published within the county " where the office of the Board of Directors is situated; " and if any portion of such territory to be excluded lie " within another county or counties, then said notice " shall be so published in a newspaper published within " each of such counties. Such notice shall require the " electors to cast ballots which shall contain the words " 'For Exclusion,' or 'Against Exclusion,' or words " equivalent thereto. Such election shall be conducted " in accordance with the general election laws of the " State; *provided*, that no particular form of ballot shall " be required.

" SEC. 8. If at such election a majority of all the " votes cast shall be against the exclusion of said lands " from the district, the Board shall deny and dismiss " said petition and proceed no further in said matter; " but if a majority of such votes be in favor of the ex- " clusion of said lands from the district, the Board " shall thereupon order that the said lands mentioned " in said resolution be excluded from the district. The " said order shall describe the boundaries of the dis- " trict, should the exclusion of the said lands from said " district change the boundaries of the district; and for " that purpose the Board may cause a survey to be " made of such portions of the boundaries as the Board " may deem necessary.

"SEC. 9. Upon the entry in the minutes of the "Board of any of the orders hereinbefore mentioned, a "copy thereof, certified by the President and the "Secretary of the Board, shall be filed for record in the "Recorder's office of each county within which are "situated any of the lands of the district, and there- "upon said district shall be and remain an irrigation "district as fully, to every intent and purpose, as it "would be had no change been made in the boundaries "of the district, or had the lands excluded therefrom "never constituted a portion of the district.

"SEC. 10. If the lands excluded from any district "under this Act shall embrace the greater portion of "any division or divisions of such district, then the "office of Director for such division or divisions shall "become and be vacant at the expiration of ten days "from the final order of the Board, under section eight "of this Act, excluding said lands, and such vacancy "or vacancies shall be filled by appointment by the "Board of Supervisors of the county where the office of "such Board is situated from the district at large. A "director, appointed as above provided, shall hold his "office until the next regular election for said district, "and until his successor is elected and qualified.

"SEC. 11. At least thirty days before the next "general election of such district, the Board of Direc- "tors thereof shall make an order dividing said district "into five divisions, as nearly equal in size as may be "practicable, which shall be numbered first, second,

"third, fourth, and fifth, and one Director shall be "elected by each division. For the purposes of elec- "tions in such district, the said Board of Directors "must establish a convenient number of election pre- "cincts, and define the boundaries thereof, which said "precincts may be changed from time to time, as the "Board of Directors may deem necessary.

"SEC. 12. A guardian, an executor, or an admin- "istrator of an estate, who is appointed as such under "the laws of this State, and who, as such guardian, ex- "ecutor, or administrator, is entitled to the possession "of the lands belonging to the estate which he repre- "sents, may, on behalf of his ward or the estate which "he represents, upon being thereto properly authorized "by the proper Court, sign and acknowledge the peti- "tion in this Act mentioned, and may show cause, as "in this Act provided, why the boundaries of the dis- "trict should not be changed.

"SEC. 13. In case of the exclusion of any lands "under the provisions of this Act, there shall be re- "funded to any and all persons who have paid any "assessment or assessments to such district, or any "lands so excluded, any sum or sums so paid. Such "payments shall be made in the same manner as other "claims against such district, and from such fund or "funds as the Board of Directors may designate.

"SEC. 14. This Act shall take effect from and after "its passage."

ACT OF MARCH 16, 1889, Cal. Statz., 1889.
(pp. 212-213)

" CHAPTER CLXXVIII.

" *An Act supplemental to an Act entitled, 'An Act to*
" *'provide for the organization and government of irri-*
" *'gation districts, and to provide for the acquisition*
" *'of water and other property, and for the distribu-*
" *'tion of water thereby for irrigation purposes,' ap-*
" *proved March 7, 1887, and to provide for the exam-*
" *ination, approval, and confirmation of proceedings*
" *for the issue and sale of bonds issued under the pro-*
" *visions of said Act.*

" [Approved March 16, 1889.]

" *The People of the State of California, represented in*
" *Senate and Assembly, do enact as follows:*

" SECTION 1. The Board of Directors of an irriga-
" tion district, now or hereafter organized under the pro-
" visions of the Act entitled 'An Act to provide for the
" 'organization and government of irrigation districts,
" 'and to provide for the acquisition of water and other
" 'property, and for the distribution of water thereby
" 'for irrigation purposes,' approved March seventh,
" eighteen hundred and eighty-seven, may commence a
" special proceeding in and by which the proceedings
" of said Board and of said district, providing for and
" authorizing the issue and sale of the bonds of said
" district, whether said bonds or any of them have or
" have not then been sold, may be judicially examined,
" approved, and confirmed.

"SEC. 2. The Board of Directors of the irrigation "district shall file in the Superior Court of the county "in which the lands of the district, or some portion "thereof are situated, a petition praying, in effect, that "the proceedings aforesaid may be examined, approved, "and confirmed by the Court. The petition shall state "the facts showing the proceedings had for the issue "and sale of said bonds; and shall state generally that "the irrigation district was duly organized, and that "the first Board of Directors was duly elected; but the "petition need not state the facts showing such organ- "ization of the district, or the election of said first "Board of Directors.

"SEC. 3. The Court shall fix the time for the hear- "ing of said petition, and shall order the Clerk of the "Court to give and publish a notice of the filing of "said petition. The notice shall be given and pub- "lished in the same manner and for the same length of "time, that a notice of a special election provided for "by said Act to determine whether the bonds of said "district shall be issued is required to be given and "published. The notice shall state the time and place "fixed for the hearing of the petition, and the prayer "of the petition, and that any person interested in the "organization of said district, or in the proceedings for "the issue or sale of said bonds, may, on or before the "day fixed for the hearing of said petition, demur to or "answer said petition. The petition may be referred "to and described in said notice as the petition of the

"Board of Directors of ——— Irrigation District (giv-
"ing its name) praying that the proceedings for the
"issue and sale of the bonds of said district may be ex-
"amined, approved, and confirmed by said Court.

"SEC. 4. Any person interested in said district, or
"in the issue or sale of said bonds, may demur to or
"answer said petition. The provisions of the Code of
"Civil Procedure respecting the demurrer, and the
"answer to a verified complaint, shall be applicable to a
"demurrer and answer to said petition. The persons
"so demurring to or answering said petition shall be
"the defendants to said special proceeding, and the Board
"of Directors shall be the plaintiff. Every material
"statement of the petition not specifically controverted
"by the answer, must, for the purposes of said special
"proceeding, be taken as true; and each person failing
"to answer the petition shall be deemed to admit as
"true all the material statements of the petition. The
"rules of pleading and practice, provided by the Code
"of Civil Procedure, which are not inconsistent with
"the provisions of this Act, are applicable to the
"special proceeding herein provided for. A motion for
"a new trial must be made upon the minutes of the
"Court. The order granting a new trial must specify
"the issues to be re-examined on such new trial, and
"the findings of the Court upon the other issues shall
"not be affected by such order granting a new trial.

"SEC. 5. Upon the hearing of such special proceed-
"ings, the Court shall have power and jurisdiction to

" examine and determine the legality and validity of,
" and approve and confirm, each and all of the proceed-
" ings for the organization of said district under the
" provisions of the said Act, from and including the
" petition for the organization of the district, and all
" other proceedings which may affect the legality or
" validity of said bonds, and the order for the sale, and
" the sale thereof. The Court, in inquiring into the
" regularity, legality, or correctness of said proceedings,
" must disregard any error, irregularity or omission
" which does not affect the substantial rights of the
" parties to said special proceedings; and it may ap-
" prove and confirm such proceedings in part, and dis-
" approve and declare illegal or invalid other and sub-
" sequent parts of the proceedings. The Court shall
" find and determine whether the notice of the filing of
" said petition has been duly given and published, for
" the time and in the manner in this Act prescribed.
" The costs of the special proceedings may be allowed
" and apportioned between all the parties, in the dis-
" cretion of the Court.

" SEC. 6. An appeal from an order granting or re-
" fusing a new trial, or from the judgment, must be
" taken by the party aggrieved within ten days after
" the entry of said order or said judgment.

" SEC. 7. This Act shall take effect and be in force
" from and after its passage."

ACT OF MARCH 20, 1891, Cal. Statz., 1891.

(pp. 142-147)

"CHAPTER CXXVII.

"*An Act to amend an Act entitled 'An Act to provide "'for the organization and government of irrigation "'districts, and to provide for the acquisition of water "'and other property, and for the distribution of "'water thereby for irrigation purposes,' approved "March 7, 1887, by amending sections one, two, "three, four, eleven, twelve, thirty-five, and forty-two "thereof, relating to irrigation districts.*

"[Approved March 20, 1891.]

"*The People of the State of California, represented in "Senate and Assembly, do enact as follows:*

"SECTION 1. Section 1 of said Act is hereby " amended to read as follows:

"Section 1. Whenever fifty, or a majority of the " holders of title, or evidence of title, to lands " susceptible of one mode of irrigation from a " common source, and by the same system of works, " desire to provide for the irrigation of the same, they " may propose the organization of an irrigation dis- " trict, under the provisions of this Act, and when so " organized, such district shall have the powers con- " ferred, or that may hereafter be conferred, by law " upon such irrigation districts. The equalized county " assessment roll next preceding the presentation of a " petition for the organization of an irrigation district,

" under the provisions of this Act, shall be sufficient " evidence of title for the purposes of this Act.

"SEC. 2. Section two of said Act is hereby amended " to read as follows:

"Section 2. A petition shall first be presented to " the Board of Supervisors of the county in which the " lands, or the greatest portion thereof, is situated, " signed by the required number of holders of title, or " evidence of title, of such proposed district, evidenced " as above provided, which petition shall set forth and " particularly describe the proposed boundaries of such " district, and shall pray that the same may be organ- " ized under the provisions of this Act. The petition- " ers must accompany the petition with a good and " sufficient bond, to be approved by the said Board of " Supervisors, in double the amount of the probable " cost of organizing such district, conditioned that " the bondsmen will pay all the said costs in case said " organization shall not be effected. Such petition " shall be presented at a regular meeting of the said " Board, and shall be published for at least two weeks " before the time at which the same is to be presented, " in some newspaper printed and published in the " county where said petition is presented, together " with a notice stating the time of the meeting at " which the same will be presented; and if any por- " tion of such proposed district lie within another " county, or counties, then said petition and notice " shall be published in a newspaper published in each

" of said counties. When such petition is presented,
" the said Board of Supervisors shall hear the same
" and may adjourn such hearing from time to time,
" not exceeding four weeks in all; and on the final
" hearing may make such changes in the proposed
" boundaries as they may find to be proper, and shall
" establish and define such boundaries; *provided*, that
" said Board shall not modify said boundaries so as to
" except from the operation of this Act any territory
" within the boundaries of the district proposed by said
" petitioners which is susceptible of irrigation by the
" same system of works applicable to the other lands
" in such proposed district; nor shall any lands which
" will not, in the judgment of the said Board, be bene-
" fited by irrigation by said system be included within
" such district; *provided*, that any person whose lands
" are susceptible of irrigation from the same source
" may, in the discretion of the Board, upon application
" of the owner to said Board, have such lands in-
" cluded in said district. Said Board shall also make
" an order dividing said district into five divisions, as
" nearly equal in size as may be practicable, which
" shall be numbered first, second, third, fourth, and
" fifth, and one Director, who shall be a freeholder in
" the division and an elector and resident in the dis-
" trict, shall be elected by each division; *provided*, that
" if a majority of the holders of title or evidence of
" title, evidenced as above provided, petition for the
" formation of a district, the Board of Supervisors may,

" if so requested in the petition, order that there may " be either three or five Directors, as said Board may " order, for such district, and that they may be elected " by the district at large. Said Board of Supervisors " shall then give notice of an election to be held in " such proposed district, for the purpose of determining " whether or not the same shall be organized under " the provisions of this Act. Such notice shall de- " scribe the boundaries so established, and shall des- " ignate a name for such proposed district, and said " notice shall be published for at least three weeks " prior to such election in a newspaper published within " said county; and if any portion of such proposed dis- " trict lie within another county or counties, then said " notice shall be published in a newspaper pub- " lished within each of said counties. Such notice " shall require the electors to cast ballots, which " shall contain the words 'Irrigation District— " 'Yes,' or 'Irrigation District—No,' or words equiva- " lent thereto, and also the names of persons to be voted " for to fill the various elective offices hereinafter pre- " scribed. No person shall be entitled to vote at any " election held under the provisions of this Act, unless " he shall possess all the qualifications required of " electors under the general election laws of this State.

"SEC. 3. Section three of said Act is hereby amended " to read as follows:

"Section 3. Such election shall be conducted as nearly " as practicable in accordance with the general laws of

" this State; *provided*, that no particular form of ballot " shall be required. The said Board of Supervisors " shall meet on the second Monday next succeeding " such election, and proceed to canvass the votes cast " thereat, and if upon such canvass it appear that at " least two-thirds of all the votes cast are 'Irrigation " District—Yes,' the said Board shall, by an order en- " tered on its minutes, declare such territory duly or- " ganized as an irrigation district, under the name and " style theretofore designated, and shall declare the " persons receiving, respectively, the highest number " of votes for such several offices to be duly elected to " such offices. And no action shall be commenced or " maintained, or defense made, affecting the validity of " the organization, unless the same shall have been " commenced or made within two years after the mak- " ing and entering of such order. Said Board shall " cause a copy of such order, duly certified, to be imme- " diately filed for record in the office of the County Re- " corder of each county in which any portion of such " lands are situated, and must also immediately forward a " copy thereof to the Clerk of the Board of Supervisors of " each of the counties in which any portion of the dis- " of trict may lie, and no Board of Supervisors of any " county including any portion of such district shall, " after the date of the organization of such district, " allow another district to be formed including any of " the lands in such district, without the consent of the " Board of Directors thereof; and from and after the

" date of such filing, the organization of such district " shall be complete, and the officers thereof shall be " entitled to enter immediately upon the duties of their " respective offices, upon qualifying in accordance with " law, and shall hold such offices, respectively, until " their successors are elected and qualified. For " the purposes of the election above provided for, the " said Board of Supervisors must establish a conven- " ient number of election precincts in said proposed " district, and define the boundaries thereof, which " said precincts may thereafter be changed by the " Board of Directors of such district. In any district " the Board of Directors thereof may, upon the presen- " tation of a petition therefor, by a majority of the " holders of title or evidence of title of said district, " evidenced as above provided, order that on and after " the next ensuing general election for the district, " there shall be either three or five Directors, as said " Board may order, and that they shall be elected by " the district at large, or by divisions, as so petitioned " and ordered; and after such order such Directors " shall be so elected.

"SEC. 4. Section 4 of said Act is hereby amended to " read as follows:

"Section 4. An election shall be held in each dis- " trict on the first Wednesday in February, eighteen " hundred and ninety-three, and on the first Wednes- " day in February in each second year thereafter, at " which an Assessor, a Collector, and a Treasurer, and

" a Board of Directors for the district shall be elected. " The person receiving the highest number of votes " for any office to be filled at such election is elected " thereto, and shall hold office from the first Tuesday " in March next after for two years, and until his suc- " cessor is elected and qualified. Within ten days " after receiving their certificate of election, hereinafter " provided for, said officers shall take and subscribe " the official oath and file the same in the office of the " Board of Directors, and execute the bond hereinafter " provided for. The Assessor shall execute an official " bond in the sum of five thousand dollars, and the " Collector an official bond in the sum of twenty thou- " sand dollars, and the District Treasurer an official " bond in the sum of fifty thousand dollars; each of " said bonds to be approved by the Board of Directors; " and each member of said Board of Directors shall " execute an official bond in the sum of five thousand " dollars, which said bonds shall be approved by the " Judge of the Superior Court of said county where " such organization was effected, and shall be recorded " in the office of the County Recorder thereof, and filed " with the Secretary of said Board. All official bonds " herein provided for shall be in the form prescribed by " law for the official bonds of county officers.

"SEC. 5. Section eleven of said Act is hereby " amended to read as follows:

"Section 11. On the first Tuesday in March next " following their election, the Board of Directors shall

" meet and organize as a Board, elect a President from " their number, and appoint a Secretary, who shall " each hold office during the pleasure of the Board. " The Board shall have the power, and it shall be " their duty, to manage and conduct the business and " affairs of the district; make and execute all necessary " contracts; employ and appoint such agents, officers, " and employes as may be required, and prescribe their " duties; establish equitable by-laws, rules and regula- " tions for the distribution and use of water among the " owners of said lands, and generally to perform all " such acts as shall be necessary to fully carry out the " purposes of this Act. The said by-laws, rules and " regulations must be printed in convenient form for " distribution in the district. And it is hereby ex- " pressly provided that all waters distributed for irri- " gation purposes shall be apportioned ratably to each " land owner upon the basis of the ratio which the last " assessment of such owner for district purposes within " said district bears to the whole sum assessed upon " the district; *provided*, that any land owner may assign " the right to the whole or any portion of the waters so " apportioned to him.

"SEC. 6. Section twelve of said Act is hereby " amended to read as follows:

"Section 12. The Board of Directors shall hold a " regular monthly meeting in their office, on the first " Tuesday in every month, and such special meetings " as may be required for the proper transaction of busi-

" ness; *provided*, that all special meetings must be " ordered by a majority of the Board. The order must " be entered of record, and five days' notice thereof must, " by the Secretary, be given to each member not join- " ing in the order. The order must specify the busi- " ness to be transacted, and none other than that spe- " cified must be transacted at such special meeting. " All meetings of the Board must be public, and three " members shall constitute a quorum for the transac- " tion of business; but on all questions requiring a " vote there shall be a concurrence of at least three " members of said Board. All records of the Board shall " be open to the inspection of any elector during busi- " ness hours. The Board and its agents and employes " shall have the right to enter upon any land to make " surveys, and may locate the necessary irrigation " works and the line for any canal or canals, and the " necessary branches for the same, on any lands which " may be deemed best for such location. Said Board " shall also have the right to acquire, either by pur- " chase or condemnation or other legal means, all " lands, and waters and water rights, and other prop- " erty necessary for the construction, use, supply, " maintenance, repair, and improvements of said canal " or canals and works, including canals and works con- " structed and being constructed by private own- " ers, lands for reservoirs for the storage of " needful waters, and all necessary appurte- " nances. In case of purchase, the bonds of the

" district hereinafter provided for may be used at their " par value in payment; and in case of condemnation " the Board shall proceed, in the name of the district, " under the provisions of title seven, of part three, of " the Code of Civil Procedure. Said Board may also " construct the necessary dams, reservoirs and works " for the collection of water for said district, and do " any and every lawful act necessary to be done that " sufficient water may be furnished to each land owner " in said district for irrigation purposes. The use of " all water required for the irrigation of the lands of " any district formed under the provisions of this Act, " together with the rights of way for canals and ditches, " sites for reservoirs, and all other property required in " fully carrying out the provisions of this Act, is hereby " declared to be a public use, subject to the regulation " and control of the State, in the manner prescribed by " law.

" SEC. 7. Section thirty-five of said Act is hereby " amended to read as follows:

"Section 35. After adopting a plan of said canal or " canals, storage reservoirs, and works, the Board of " Directors shall give notice, by publication thereof, " not less than twenty days in one newspaper " published in each of the counties composing the dis- " trict (*provided*, a newspaper is published therein), " and in such other newspapers as they may deem ad- " visable, calling for bids for the construction of such " work, or of any portion thereof; if less than the

" whole work is advertised, then the portion so adver-
" tised must be particularly described in such notice.
" Said notice shall set forth that plans and specifica-
" tions can be seen at the office of the Board, and that
" the Board will receive sealed proposals therefor, and
" that the contract will be let to the lowest responsible
" bidder, stating the time and place for opening said
" proposals, which, at the time and place appointed,
" shall be opened in public; and as soon as convenient
" thereafter the Board shall let said work, either in
" portions or as a whole, to the lowest responsible bid-
" der; or they may reject any or all bids and readvertise
" for proposals, or may proceed to construct the work
" under their own superintendence. Contracts for the
" purchase of material shall be awarded to the lowest
" responsible bidder. Any person or persons to whom
" a contract may be awarded shall enter into a bond,
" with good and sufficient sureties, to be approved by
" the Board, payable to said district for its use, for
" twenty-five per cent of the amount of the contract
" price, conditioned for the faithful performance of said
" contract. The work shall be done under the direc-
" tion and to the satisfaction of the engineer, and be
" approved by the Board.

" SEC. 8. Section forty-two of said Act is hereby
" amended to read as follows:

" Section 42. The Board of Directors, or other offi-
" cers of the district, shall have no power to incur any
" debt or liability whatever, either by issuing bonds or

" otherwise, in excess of the express provisions of this " Act; and any debt or liability incurred in excess of " such express provisions shall be and remain abso- " lutely void, except that for the purposes of organiza- " tion, or for any of the purposes of this Act, the " Board of Directors may, before the collection of the " first assessment, incur an indebtedness not exceeding " in the aggregate the sum of two thousand dollars, " and may cause warrants of the district to issue " therefor, bearing interest at seven per cent per annum.

" SEC. 9. This Act shall take effect immediately."

ACT OF MARCH 31, 1897, Cal. Stats. 1897.

(pp. 254-287)

" CHAPTER CLXXXIX.

" *An Act to provide for the organization and government* " *of irrigation districts, and to provide for the* " *acquisition or construction thereby of works for* " *the irrigation of the lands embraced within such* " *districts, and, also, to provide for the distribution* " *of water for irrigation purposes.*

"[Approved March 31, 1897.]

" *To the People of the State of California, represented* " *in Senate and Assembly, do enact as follows:*

" ORGANIZATION.

" SECTION 1. A majority in number of the holders " of title, or evidence of title, to lands susceptible of " irrigation from a common source and by the same " system of works, such holders of title, or evidence of

" title, representing a majority in value of said lands, " according to the equalized county assessment roll or " rolls for the year last preceding, may propose the " organization of an irrigation district, under the pro- " visions of this Act. Said equalized assessment roll " or rolls shall be sufficient evidence of title for the " purposes of this Act.

" SEC. 2. In order to propose the organization of an " irrigation district, a petition shall be presented to the " Board of Supervisors of the county in which the " lands within the proposed district, or the greater " portion, thereof, are situated, signed by the required " number of holders of title, or evidence of title, to " lands within such proposed district, and representing " the requisite majority in value of said lands, which " petition shall set forth the boundaries of the pro- " posed district, and shall state, generally, the source " from which said lands are proposed to be irrigated, " and the character of the works proposed to be " acquired or constructed for irrigation purposes, and " shall pray that the territory embraced within the " boundaries of the proposed district may be organ- " ized as an irrigation district under the provisions of " this Act. The petition must be accompanied with " a good and sufficient undertaking, to be approved by " said Board of Supervisors, in double the amount of " the probable cost of organizing such district, condi- " tioned that the sureties shall pay all of said costs, in " case said organization shall not be effected. Said

" petition shall be presented at a regular meeting of " said board, and shall be published for at least two " weeks before the time at which the same is to be pre- " sented, in some newspaper of general circulation " printed and published in the county where said peti- " tion is presented, together with a notice stating the " time of the meeting at which the same will be pre- " sented; and if any portion of the lands within said " proposed district lie within another county or coun- " ties, then said petition and notice shall be published, " as above provided, in a newspaper published in each " of said counties. When such petition is presented, " said Board of Supervisors shall hear the same, and " may adjourn such hearing from time to time, not " exceeding four weeks in all. And on the final hear- " ing said board shall make such changes in the pro- " posed boundaries as may be deemed advisable, and shall " define and establish such boundaries. But said board " shall not modify said boundaries so as to exclude " from such proposed district any territory which is " susceptible of irrigation from a common source and " by the same system of works applicable to the other " lands in such proposed district; nor shall any lands " which will not, in the judgment of said board, be " benefited by irrigation, by means of said system of " works, be included within such proposed district. " Any person whose lands are susceptible of irrigation " from the same source and system of works, may, " upon his application, in the discretion of said board,

" have such lands included within said proposed dis-
" trict.

"SEC. 3. Upon such hearing of said petition, the
" Board of Supervisors shall determine whether or not
" said petition complies with the requirements of sec-
" tions one and two of this Act, and for that purpose
" must hear all competent and relevant testimony
" offered in support or in opposition thereto. Such
" determination shall be entered upon the minutes of
" said Board of Supervisors.

"SEC. 4. The right of appeal from said order to the
" Superior Court of the county where said petition is
" heard is hereby given to any person interested who
" is a party to the record; provided, that if more than
" one appeal be taken they shall be consolidated and
" tried together. Such appeal shall be taken within ten
" days after the entry of such order upon the minutes
" of the Board of Supervisors. The appeal shall be
" taken and heard in the same manner as appeals from
" Justices' Courts to the Superior Court, except as
" herein otherwise provided. Upon the appeal, the
" Superior Court may make and enter its judgment
" affirming, modifying, or reversing the order appealed
" from. Within ten days thereafter the Superior
" Court must cause its remittitur to issue to said Board
" of Supervisors, and if said order of the Board of Su-
" pervisors is modified or reversed, the judgment of the
" Superior Court and its remittitur shall direct the
" Board of Supervisors what order it shall enter. Such

" remittitur shall be filed by the clerk of the Board " of Supervisors, and at the first regular meeting of " the board thereafter, it shall cause to be entered in " its minutes the order as directed by said Superior " Court. The appeal herein provided for shall be " heard and determined within thirty days from the " time of filing the notice of appeal.

"SEC. 5. If, on said final hearing, the boundaries of " the proposed district are defined and established, " said board shall make an order dividing said district " into five divisions, as nearly equal in size as may be " practicable, which shall be numbered first, second, " third, fourth, and fifth, and one director shall be " elected for each division by the electors thereof; pro- " vided, that if so requested in said petition, the board " may order that there shall be only three divisions in " said district, and that only three directors be elected, " or that they be elected for the district at large.

"ELECTION ON ORGANIZATION.

"SEC. 6. Said Board of Supervisors shall then give " notice of an election to be held in such proposed dis- " trict, for the purpose of determining whether or not " the same shall be organized under the provisions of " this Act. Such notice shall describe the boundaries " so established, and shall designate a name for the " proposed district, and said notice shall be published " for at least three weeks previous to such election, in " a newspaper published within the county in which

" the petition for the organization of the proposed dis-
" trict was presented; and if any portion of such pro-
" posed district is within another county or counties,
" then such notice shall be published for the same
" length of time in a newspaper published in each of
" said counties. Such notice shall require the electors
" to cast ballots, which shall contain the words "Irri-
" gation District—Yes," or "Irrigation District—No,"
" or words equivalent thereto, and also the names of
" persons to be voted for at said election. For the
" purposes of said election the Board of Supervisors
" must establish a convenient number of election pre-
" cincts in said proposed district, and define the boun-
" daries of the same. Such election shall be conducted
" as nearly as practicable in accordance with the gen-
" eral election laws of the State, but no particular form
" of ballot shall be required.

"SEC. 7. At such election there shall be elected a
" board of directors, and an assessor, tax collector, and
" treasurer; provided, that where a consolidation of
" officers as hereinafter provided for is deemed advis-
" able in the organization of a district, the petitioners
" may request in their petition for organization such
" consolidation, and the Board of Supervisors calling
" the election shall in its order therefor announce such
" consolidation, and then only one person shall be
" elected to fill the several offices so consolidated.

"SEC. 8. No person shall be entitled to vote at any
" election held under the provisions of this Act unless

" he possesses all the qualifications required of electors
" under the general election laws of the State.

" SEC. 9. The Board of Supervisors shall meet on
" the second Monday succeeding such election, and
" shall proceed to canvass the votes cast thereat, and if
" upon such canvass it appears that at least two-thirds
" of all the votes cast are "Irrigation District—Yes,"
" said bond shall, by an order entered on its minutes de-
" clare the territory duly organized as an irrigation dis-
" trict, under the name theretofore designated, and shall
" declare the persons receiving respectively the highest
" number of votes at said election to be duly elected.

"SEC. 10. Said board shall then cause a copy of
" such order, duly certified, to be immediately filed for
" record in the office of the County Recorder of any
" county in which any portion of the lands embraced
" in such district are situated, and must also immedi-
" ately forward a copy thereof to the clerk of the Board
" of Supervisors of each of said last mentioned counties,
" and no Board of Supervisors of any county in which
" any portion of the lands embraced in such district are
" situated shall, after the date of the organization
" thereof, allow another district to be formed including
" any portion of said lands, without the consent of the
" board of directors of the district in which they are
" situated. From and after such filing, the organiza-
" tion of such district shall be complete.

"SEC. 11. Such election on organization may be
" contested by any person owning property within the

" proposed district liable to assessment. The directors " elected at such election shall be made parties defend- " ant. Such contest shall be brought in the Superior " Court of the county where the petition for organiza- " tion is filed; provided, that if more than one contest " be pending they shall be consolidated and tried " together. The court having jurisdiction shall speedily " try such contest, and determine, upon the hearing, " whether the election was fairly conducted and in " substantial compliance with the requirements of this " Act, and enter its judgment accordingly. Such " contest must be brought within twenty days after the " canvass of the vote and declaration of the result by " the Board of Supervisors. The right of appeal is " hereby given to either party to the record within " thirty days from the entry of the judgment. The " appeal must be heard and determined by the Supreme " Court within sixty days from the time of filing the " notice of appeal.

" SEC. 12. The officers elected at the election here- " inbefore provided for shall immediately enter upon " their duties as such, upon qualifying in the manner " for such officers herein provided. Said officers shall " hold office respectively until their successors are " elected and qualified.

" DUTIES AND POWERS OF THE BOARD OF DIRECTORS.

" SEC. 13. The directors of any district created " after the passage of this Act, on the first Tuesday

" after their election, after they shall have qualified, shall " meet and classify themselves by lot into two classes, " as nearly equal in number as possible, and the term " after office of the class having the greater number shall " expire at the next general February election in this " Act provided for; and the term of office of the class " having the lesser number shall terminate at the next " general February election thereafter. After such " classification, said directors shall organize as a board, " shall elect a president from their number, and appoint " a secretary, who shall each hold office during the " pleasure of the board. The salary of the secretary " and the amount of the bond to be given by him for " the faithful performance of his duties shall be fixed " by the board of directors.

" SEC. 14. The board of directors shall hold a reg- " lar monthly meeting, in their office, on the first " Tuesday in every month, and such special meetings " as may be required for the proper transaction of " business; provided, that all special meetings must be " ordered by a majority of the board. The order must " be entered of record, and five days' notice thereof " must, by the secretary, be given to each member not " joining in the order. The order must specify the " business to be transacted, and none other than that " specified must be transacted at such special meeting. " All meetings of the board must be public, and three " members shall constitute a quorum for the transac- " tion of business; provided, however, that when the

" board consists of three members only, then in such " cases, two shall constitute a quorum for the transac- " tion of business, but on all questions requiring a " vote there shall be a concurrence of at least the num- " ber constituting a quorum. All records of the board " shall be open to public inspection during business " hours. The board of directors shall, on the first " Tuesday in January of each and every year render, " and immediately thereafter cause to be published, a " verified statement of the financial condition of the " district, showing particularly the receipts and dis- " bursements of the last preceding year, together with " the source of such receipts and purpose of such dis- " bursements. Said publication shall be made at least " once a week for two weeks, in some paper published " in the county where the office of the board of direc- " tors of such district is situated.

" SEC. 15. The board shall have the power, and it " shall be their duty, to manage and conduct the busi- " ness and affairs of the district; make and execute all " necessary contracts; employ and appoint such agents, " officers, and employees as may be required, and pre- " scribe their duties. The board and its agents and " employes shall have the right to enter upon any land " to make surveys, and may locate the necessary irri- " gation works and the line for any canal or canals, " and the necessary branches for the same, on any lands " which may be deemed best for such location. Said " board shall also have the right to acquire, either by

" purchase or condemnation, or other legal means, all " lands, and waters, and water rights, and other prop- " erty necessary for the construction, use, supply, main- " tenance, repair, and improvements of said canal or " canals and works, including canals and works con- " structed and being constructed by private owners, " lands for reservoirs for the storage of needful waters, " and all necessary appurtenances. But no purchase of " any waters, or water rights, or canals, or reservoirs, or " reservoir sites, or irrigation works, or other real prop- " erty of any nature or kind, for any price in excess of ten " thousand dollars shall be final or binding on the dis- " trict, nor shall the purchase price thereof be paid, " until a petition of a majority of the holders of title, " or evidence of title, to lands within the district, such " holders of title, or evidence of title, representing a " majority in value of said land, according to the last " equalized assessment roll of the district, shall " have been filed with the board and an order of the " board made thereon confirming such purchase. Said " board may also construct the necessary dams, reser- " voirs, and works for the collection of water for said " district, and do any and every lawful act necessary " to be done, that sufficient water may be furnished to " each land owner in said district for irrigation pur- " poses. The said board is hereby authorized and em- " powered to take conveyances or other assurances for " all property acquired by it under the provisions of " this Act, in the name of such irrigation district, to

" and for the uses and purposes herein expressed, and " to institute and maintain any and all actions and " proceedings, suits at law or in equity, necessary or " proper in order to fully carry out the provisions of " this Act or to enforce, maintain, protect, or preserve " any and all rights, privileges, and immunities cre- " ated by this Act, or acquired in pursuance thereof. " And in all courts, actions, suits, or proceedings, the said " board may sue, appear, and defend in person or by " attorneys, and in the name of such irrigation district. " It shall be the duty of said board to establish equit- " able by-laws, rules, and regulations for the distribution " and use of water among the owners of said lands, which " must be printed in convenient form for distribution " in the district. Said board shall have power gener- " ally to perform all such acts as shall be necessary to " fully carry out the purposes of this Act.

" SEC. 16. In case of condemnation proceedings " the board shall proceed, in the name of the district, " under the provisions of title seven, part three, of the " Code of Civil Procedure.

" WATER REGULATIONS.

" SEC. 17. The use of all water required for the " irrigation of the lands of any district formed under " the provisions of this Act, or the Act of which this is " supplementary or amendatory, together with the " rights of way for canals and ditches, sites for reser- " voirs, and all other property required in fully carry-

" ing out the provisions of this Act, is hereby declared " to be a public use, subject to the regulation and con- " trol of the State, in the manner prescribed by law.

"SEC. 18. It is hereby expressly provided that all " waters distributed for irrigation purposes shall be " apportioned ratably to each land owner upon the " basis of the ratio which the last assessment of such " owner for district purposes within said district bears " to the whole sum assessed upon the district; pro- " vided, that any land owner may assign the right to " the whole or any portion of the waters so apportioned " to him.

"GENERAL ELECTIONS.

"SEC. 19. An election shall be held in each irriga- " tion district on the first Wednesday in February, " eighteen hundred and ninety-nine, and on the first " Wednesday in February in each second year there- " after, at which an assessor, a collector, and a treas- " urer, and directors for the district shall be elected. " The person receiving the highest number of votes " for any office to be filled at such election shall be " elected thereto. The assessor, collector, and treas- " urer shall each hold office from the first Tuesday in " March next after, for two years, and until his suc- " cessor is elected and qualified. Within ten days after " receiving their certificates of election, hereinafter " provided for, said officers shall take and subscribe " the official oath and file the same in the office of the " board of directors, and execute the bond hereinafter

" provided for. The assessor shall execute an official
" bond in the sum of five thousand dollars, and the
" collector an official bond in the sum of twenty thousand
" dollars, and the district treasurer an official bond in the
" sum of fifty thousand dollars; each of said bonds to
" be approved by the board of directors; provided, that
" the board of directors may if it shall be deemed advis-
" able, fix the bonds of the treasurer and collector,
" respectively, to suit the conditions of the district,
" the maximum amount of the treasurer's bond not to
" exceed fifty thousand dollars, and the minimum
" amount thereof not to be less than ten thousand dol-
" lars; and the maximum amount of the collector's
" bond not to exceed twenty thousand dollars, and the
" minimum amount thereof not to be less than five
" thousand dollars. Each member of said board of
" directors shall execute an official bond in the sum of
" five thousand dollars, which said bonds shall be
" approved by the Judge of the Superior Court of said
" county where such organization was effected, and
" shall be recorded in the office of the County Recorder
" thereof, and filed with the secretary of said board. All
" official bonds herein provided for shall be in the
" form prescribed by law for the official bonds of county
" officers.

" SEC. 20. On the first Tuesday in March next fol-
" lowing their election, the directors who shall have
" been elected at the general February election, shall
" meet and organize as a board, elect a president and

" appoint a secretary, who shall each hold office during " the pleasure of the board. And the directors of dis- " tricts now organized, who shall have been elected at " the general February election of eighteen hundred " and ninety-nine, shall, on the first Tuesday in March " next thereafter, when they meet to organize, first " classify themselves by lot into two classes as nearly " equal in number as possible. And the term of office " of the class having the greater number shall be two " years; and the term of office of the lesser number " shall be four years. The full term of office of di- " rectors is hereby fixed at four years.

"SEC. 21. Fifteen days before any election held " under this Act, subsequent to the organization of " any district, the secretary of the board of directors " shall cause notices to be posted in three public places " in each election precinct, of the time and place of " holding the election, and shall also post a general " notice of the same in the office of said board, which " shall be established and kept at some fixed place, to " be determined by said board, specifying the polling " places of each precinct. Prior to the time for post- " ing the notices, the board must appoint for each pre- " cinct, from the electors thereof, one inspector and " two judges, who shall constitute a board of election " for such precinct. If the board fail to appoint a board " of election, or the members appointed do not attend at " the opening of the polls on the morning of election, " the electors of the precinct present at that hour may

" appoint the board, or supply the place of an absent " member thereof. The board of directors must, in its " order appointing the board of election, designate the " house or place within the precinct where the election " must be held.

" SEC. 22. The inspector is chairman of the election " board, and may administer all oaths required in the " progress of an election; and appoint judges and " clerks, if, during the progress of the election, any " judge or clerk cease to act. Any member of the " board of election, or any clerk thereof, may administer " and certify oaths required to be administered during " the progress of an election. The board of election " for each precinct must, before opening the polls, ap- " point two persons to act as clerks of the election. " Before opening the polls, each member of the board " and each clerk must take and subscribe an oath to " faithfully perform the duties imposed upon them by " law. Any elector of the precinct may administer and " certify such oath. The polls must be opened one " hour after sunrise on the morning of the election, " and be kept open until sunset, when the same must " be closed. The provisions of the general election " laws concerning the form of ballots to be used shall " not apply to elections held under this Act.

" SEC. 23. Voting may commence as soon as the " polls are opened, and may be continued during all " the time the polls remain opened, and shall be con- " ducted, as nearly as practicable, in accordance with

" the provisions of the general election laws of this
" state. As soon as all the votes are counted, a cer-
" tificate shall be drawn up on each of the papers con-
" taining the poll list and tallies, or attached thereto,
" stating the number of votes each one voted for has
" received, and designating the office to fill which he
" was voted for, which number shall be written in
" figures and in words at full length. Each certificate
" shall be signed by the clerk, judge, and the inspector.
" One of said certificates, with the poll list and the tally
" paper to which it is attached, shall be retained by the
" inspector, and preserved by him at least six months.
" The ballots shall be strung upon a cord or thread by
" the inspector, during the counting thereof, in the
" order in which they are entered upon the tally list by
" the clerks; and said ballots, together with the other
" of said certificates, with the poll list and tally paper
" to which it is attached, shall be sealed by the in-
" spector in the presence of the judges and clerks, and
" indorsed 'Election returns of (naming the precinct)
" precinct,' and be directed to the secretary of the
" board of directors, and shall be immediately delivered
" by the inspector, or by some other safe and respon-
" sible carrier designated by said inspector, to said
" secretary, and the ballots shall be kept unopened for
" at least six months; and if any person be of the
" opinion that the vote of any precinct has not been
" correctly counted, he may appear on the day ap-
" pointed for the board of directors to open and canvass

" the returns, and demand a recount of the vote of the " precinct that is so claimed to have been incorrectly " counted.

" SEC. 24. No list, tally paper, or certificate returned " from any election, shall be set aside or rejected for " want of form, if it can be satisfactorily understood. " The board of directors must meet at its usual place of " meeting on the first Monday after each election to " canvass the returns. If, at the time of meeting, the " returns from each precinct in the district in which the " polls were opened have been received, the board of " directors must then and there proceed to canvass the " returns; but if all the returns have not been received, " the canvass must be postponed from day to day until " all the returns have been received, or until six post- " ponements have been had. The canvass must be " made in public and by opening the returns and " estimating the vote of the district for each person " voted for, and declaring the result thereof.

" SEC. 25. The secretary of the board of directors " must, as soon as the result is declared, enter in the " records of such board a statement of such result, " which statement must show: (a) The whole number " of votes cast in the district, and in each division of " the district; (b) the names of the persons voted for; " (c) the office to fill which each person was voted for; " (d) the number of votes given in each precinct to " each of such persons; (e) the number of votes given " in each division for the office of director, and the

" number of votes given in the district for the offices of " assessor, collector, and treasurer. The board of " directors must declare elected the persons having the " highest number of votes given for each office. The " secretary must immediately make out and deliver to " such person a certificate of election, signed by him, " and authenticated with the seal of the board.

" In case of a vacancy in the office of assessor, col- " lector, or treasurer, the vacancy shall be filled by ap- " pointment of the board of directors; provided, that if " said board of directors shall neglect or refuse to make " such appointment within a period of forty days, then " the Board of Supervisors of the county wherein the " office of said board of directors is situated shall make " such appointment. In case of a vacancy in the office " of director, the vacancy shall be filled by appointment " by the Board of Supervisors of the county where the " office of such board of directors is situated, from the " division in which the vacancy occurred. An officer " appointed as above provided shall hold his office until " the next regular election for said district, and until " his successor is elected and qualified.

" SEC. 26. A director shall be a resident and free- " holder of the irrigation district, but not necessarily of " the division for which he is elected.

" SEC. 27. The board of directors may, in its dis- " cretion, consolidate any two or more of the offices of " assessor, collector, and treasurer. The order of con- " solidation must be made at least thirty days prior to

" general election of the district, and shall take effect at " the next succeeding election; provided, that the board " of directors may, at least thirty days before a general " election of the district, where the offices have been " consolidated, segregate the same, each office to be " filled at such election.

" SEC. 28. In any district the board of directors thereof " may, upon the presentation of a petition therefor, by " a majority of the holders of title, or evidence of title, " of said district, evidenced as above provided, order " that on and after the next ensuing general election " for the district, there shall be either three or five " directors, as said board may order, and they shall be " elected by the district at large, or by divisions, as so " petitioned and ordered; and after such order such " directors shall be so elected.

" TITLE TO PROPERTY.

" SEC. 29. The legal title to all property acquired " under the provisions of this Act shall immediately " and by operation of law vest in such irrigation dis- " trict, and shall be held by such district in trust for " and is hereby dedicated and set apart to the uses and " purposes set forth in this Act. And said board is " hereby authorized and empowered to hold, use, " acquire, manage, occupy, and possess said property " as herein provided.

" ISSUANCE OF BONDS.

" SEC. 30. For the purpose of constructing neces-

" sary irrigating canals and works, and acquiring the " necessary property and rights therefor, and otherwise " carrying out the provisions of this Act, the board of " directors of any such district must, as soon after such " district has been organized as may be practicable, " and also whenever thereafter the construction fund " has been exhausted by expenditures herein author- " ized therefrom and it is necessary to raise additional " money for said purposes, estimate and determine the " amount of money necessary to be raised. And there- " after said board, when petitioned by a majority of " the holders of title, or evidence of title, to lands " within the district, such holders of title, or evidence " of title, representing a majority in value of said lands, " according to the equalized assessment roll of the dis- " trict, if such has theretofore been made, and if such " has not been made, then according to the equalized " county assessment roll covering the lands of such " district, shall immediately call a special election, at " which shall be submitted to the electors of such dis- " trict, possessing the qualifications prescribed by this " Act, the question whether or not the bonds of said " district in the amount as set forth in said petition " shall be issued. Notice of such election must be given " by posting notices in three public places in each " election precinct in said district for at least twenty " days, and also by publication of such notice in some " newspaper published in the county where the office " of the board of directors of such district is required

" to be kept, once a week for at least three successive " weeks. Such notices must specify the time of hold- " ing the election, the amount of bonds proposed to " be issued; and said election must be held and the " result thereof determined and declared in all respects " as nearly as practicable in conformity with the pro- " visions of this Act governing the election of officers; " provided, that no informalities in conducting such an " election shall invalidate the same, if the election " shall have been otherwise fairly conducted. At " such election the ballots shall contain the words " 'Bonds—Yes,' or 'Bonds—No,' or words equivalent " thereto. If a majority of the votes cast are 'Bonds " —Yes,' the board of directors shall cause bonds in said " amount to be issued; if a majority of the votes cast " at any bond election are 'Bonds—No,' the result of " such election shall be so declared and entered of rec- " ord. Whenever thereafter a petition of the character " hereinbefore provided for in this section is presented " to the board it shall so declare of record in its min- " utes, and shall thereupon submit such questions to " said electors in the same manner and with like effect " as at such previous election.

" SEC. 31. All bonds issued under the provisions of " this Act shall be payable in gold coin of the United " States, in ten series, as follows, to-wit: At the expi- " ration of twenty-one years, five per cent of the whole " number of said bonds; at the expiration of twenty- " two years, six per cent; at the expiration of twenty-

" three years, seven per cent; at the expiration of
" twenty-four years, eight per cent; at the expiration
" of twenty-five years, nine per cent; at the expiration
" of twenty-six years, ten per cent; at the expiration of
" twenty-seven years, eleven per cent; at the expiration
" of twenty-eight years, thirteen per cent; at the expi-
" ration of twenty-nine years, fifteen per cent; and at
" the expiration of thirty years, sixteen per cent; that
" the several enumerated percentages being of the
" entire amount of the bond issue, but each bond must
" be made payable at a given time for its entire
" amount and not for a percentage. Said bonds shall
" bear interest at the rate of five per cent per annum,
" payable semi-annually, on the first day of January
" and July of each year. The principal and interest
" shall be payable at the place designated therein.
" Said bonds shall be each of the denomination of not
" less than one hundred dollars nor more than five
" hundred dollars; shall be negotiable in form, signed
" by the president and secretary, and the seal of the
" board of directors shall be affixed thereto. Each
" issue shall be numbered consecutively as issued, and
" the bonds of each issue shall be numbered consecu-
" tively, and bear date at the time of their issue. Cou-
" pons for the interest shall be attached to each bond,
" signed by the secretary. Said bonds shall express
" on their face that they were issued by authority of
" this Act, stating its title and date of approval, and
" shall also so state the number of the issue of which

" such bonds are a part. The secretary shall keep a " record of the bonds sold, their number, the date of " sale, the price received, and the name of the pur- " chaser.

" SEC. 32. The board may sell said bonds from time " to time in such quantities as may be necessary and most " advantageous, to raise money for the construction of " said canals and works, the acquisition of said property " and rights, and otherwise to fully carry out the ob- " jects and purposes of this Act. Before making any " sale the board shall, at a meeting, by resolution, de- " clare its intention to sell a specified amount of the " bonds, and the day and hour and place of such sale, " and shall cause such resolution to be entered in the " minutes, and notice of the sale to be given, by pub- " lication thereof at least three weeks, in some news- " paper published in the county where the office of the " board of directors is located, and in any other news- " paper, at its discretion. The notice shall state that " sealed proposals will be received by the board at their " office, for the purchase of bonds, till the day and hour " named in the resolution. At the time appointed the " board shall open the proposals, and award the pur- " chase of the bonds to the highest responsible bidder; " provided, however, that they may reject all bids. " Said board shall in no event sell any of the said " bonds for less than the par value thereof.

" SEC. 33. Said bonds, and the interest thereon, " shall be paid by revenue derived from an annual

" assessment upon the real property of the district; and " all the real property in the district shall be and re- " main liable to be assessed for such payments, as here- " inafter provided.

" ASSESSMENT FOR COMPLETION OF WORKS.

" SEC. 34. In case the money raised by the sale of " bonds issued be insufficient or in case the bonds be " unavailable for the completion of the plan of canal " and works adopted, and additional bonds be not voted, " it shall be the duty of the board of directors to pro- " vide for the completion of said plan by levy of assess- " ments therefor; provided, however, that such levy of " assessments shall not be made except first an estimate " of the amount required for such purposes has been " made by said board, and the question as to the mak- " ing of said levy submitted to a vote of the electors of " the district. Before such question is submitted the " order of submission shall be entered in the minutes " of the board, stating the amount to be levied and the " purpose therefor, and if submitted at a special elec- " tion said order shall, in addition, fix the day of " election. Notice of such election must be given by " posting notices in three public places in each election " precinct in said district for at least twenty days, and " also by publication of such notice in some newspaper " published in the county where the office of the board " of directors of such district is required to be kept, " once a week for at least three successive weeks. Such " notices must specify the time of holding the election,

" and the amount of assessment proposed to be levied. " Said election must be held and the result thereof de- " termined and declared in all respects as nearly as " practicable in conformity with the provisions of this " Act governing the election of officers; provided, that " no informalities in conducting such an election shall " invalidate the same, if the election shall have been " otherwise fairly conducted. At such election the " ballots shall contain the words 'Assessment—Yes,' or " 'Assessment—No,'' or words equivalent thereto. If " a majority of the votes cast are 'Assessment—Yes,' " the board of directors shall cause an assessment in " the amount named in the order of submission to be " levied; if a majority of the votes cast are 'Assess- " ment—No,' the result of such election shall be so " declared and entered of record.

" DUTIES OF THE ASSESSOR.

" SEC. 35. The assessor must, between the first " Monday in March and the first Monday in June, in " each year, assess all real property in the district, to " the persons who own, claim, have the possession, or " control thereof, at its full cash value. He must pre- " pare an assessment book, with appropriate headings " in which must be listed all such property within the " district, in which must be specified, in separate " columns, under the appropriate head: (a) the name " of the person to whom the property is assessed (if the " name is not known to the assessor, the property shall " be assessed to 'unknown owners'); (b) land by town-

" ship, range, section, or fractional section, and when " such land is not a congressional division or sub- " division, by metes and bounds, or other description " sufficient to identify it, giving an estimate of the " number of acres, locality, and the improvements " thereon; (c) city and town lots, naming the city or " town, and the number and block, according to the " system of numbering in such city or town, and the " improvements thereon; (d) the cash value of real " estate, other than city or town lots; (e) the cash " value of improvements on such real estate; (f) the " cash value of city and town lots; (g) the cash value " of improvements on city and town lots; (h) the cash " value of improvements on real estate assessed to " persons other than the owners of the real estate; (i) " the total value of all property assessed; (j) the total " value of all property after equalization by the board " of directors; (k) such other things as the board of " directors may require. Any property which may " have escaped the payment of any assessment for any " year, shall, in addition to the assessment for the " then current year, be assessed for such year with the " same effect and with the same penalties as are pro- " vided for such current year.

"SEC. 36. The board of directors must allow the " assessor as many deputies, to be appointed by him, " as will, in the judgment of the board, enable him to " complete the assessment within the time herein pre- " scribed. The board must fix the compensation of

"such deputies, which shall be paid out of the treasury "of the district. The compensation must not exceed "five dollars per day for each deputy, for the time "actually engaged, nor must any allowance be made "but for work done between the first Monday in March "and the first Monday in August in each year.

"SEC. 37. On or before the first Monday in August "in each year, the assessor must complete his assess- "ment book, and deliver it to the secretary of the "board, who must immediately give notice thereof, and "of the time the board of directors, acting as a board "of equalization, will meet to equalize assessments, by "publication in a newspaper published in each of the "counties comprising the district. The time fixed for "the meeting shall not be less than twenty nor more "than thirty days from the first publication of the "notice; and in the meantime the assessment book "must remain in the office of the secretary for the "inspection of all persons interested.

"EQUALIZATION OF ASSESSMENT.

"SEC. 38. Upon the day specified in the notice "required by the preceding section for the meeting, "the board of directors, which is hereby constituted a "board of equalization for that purpose, shall meet and "continue in session from time to time, as long as "may be necessary, not to exceed ten days, exclusive of "Sundays, to hear and determine such objections to "the valuation and assessment as may come before "them; and the board may change the valuation as

"may be just. The secretary of the board shall be "present during its sessions, and note all changes "made in the valuation of property, and in the names "of the persons whose property is assessed; and within "ten days after the close of the session he shall have "the total values, as finally equalized by the board, "extended into columns and added.

"LEVY OF AND COLLECTION OF TAXES.

"SEC 39. The board of directors shall then levy an "assessment sufficient to raise the annual interest on "the outstanding bonds, and in any year in which any "bonds shall fall due must increase said assessment to "an amount sufficient to raise a sum sufficient to pay "the principal of the outstanding bonds as they "mature. The secretary of the board must compute "and enter in a separate column of the assessment "book the respective sums, in dollars and cents, to be "paid as an assessment on the property therein enum-"erated. When collected, the assessment shall be "paid into the district treasury and be apportioned to "the several proper funds.

"In case of the neglect or refusal of the board of direc-"tors to cause such assessments and levies to be made "as in this Act provided, then the assessment of prop-"erty made by the County Assessor and the State "Board of Equalization shall be adopted, and shall be "the basis of assessment for the district, and the "Board of Supervisors of the county in which the office

" of the board of directors is situated shall cause an " assessment roll for said district to be prepared, " and shall make the levy required by this Act, in " the same manner and with like effect as if the same " had been made by said board of directors, and all " expenses incident thereto shall be borne by such " district. In case of the neglect or refusal of the col- " lector or treasurer of the district to perform the duties " imposed by law, then the Tax Collector and Treas- " urer of the county in which the office of the board of " directors is situated must, respectively, perform such " duties, and shall be accountable therefor upon their " official bonds as in other cases.

" SEC. 40. The assessment upon real property is " a lien against the property assessed from and after " the first Monday in March for any year, and the lien " for the bonds of any issue shall be a preferred lien to " that for any subsequent issue, and such lien is not re- " moved until the assessments are paid, or the property " sold for the payment thereof.

" SEC. 41. On or before the first day of November, " the secretary must deliver the assessment book to " the collector of the district, who shall within twenty " days publish a notice, in a newspaper published in " each county in which any portion of the district may " lie, that said assessments are due and payable, and " will become delinquent at 6 o'clock P. M. on the last Mon- " day of December next thereafter, and that unless paid " prior thereto, five per cent will be added to the

" amount thereof, and also the time and place at which " payment of assessments may be made, which notice " shall be published for the period of two weeks. The " collector must attend at the time and place specified " in the notice, to receive assessments, which must be " paid in gold and silver coin; he must mark the date " of payment of any assessment in the assessment " book, opposite the name of the person paying, and " give a receipt to such person, specifying the amount " of the assessment and the amount paid, with a de- " scription of the property assessed. On the last Mon- " day in December, at six o'clock P. M., of each year, " all unpaid assessments are delinquent, and thereafter " the collector must collect thereon, for the use of the " district, an addition of five per cent.

" PUBLICATION OF DELINQUENT NOTICE.

" SEC. 42. On or before the first day of February, " the collector must publish the delinquent list, which " must contain the names of the persons and a descrip- " tion of the property delinquent, and the amount of " the assessments and costs due opposite each name " and description. He must append to and publish " with the delinquent list a notice, that unless the " assessments delinquent, together with costs and per- " centage, are paid, the real property upon which such " assessments are a lien will be sold at public auction. " The publication must be made once a week for three " successive weeks, in a newspaper published in the " county in which the property delinquent is situated;

" provided, that if any property assessed to the same " person or corporation shall lie in more than one " county, then such publication may be made in any " county in which any portion of such property may " lie. The publication must designate the time and " place of sale. The time of sale must not be less than " twenty-one nor more than twenty-eight days from the " first publication, and the place must be at some point " designated by the collector, within the district; pro- " vided, however, that if there should occur any error " in the publication of the sale of the delinquent pro- " perty, which might invalidate a sale made thereunder, " and such error is discovered prior to sale thereunder, " the collector shall at once republish the sale of the " property affected by such error, making such repub- " lication conform to the provisions of this law, and the " time of sale designated in such republication must " not be less than twenty-one nor more than twenty- " eight days from the first republication; and the place " of sale must be at some point designated by the col- " lector within the district, and stated in such repub- " lication.

" SALE FOR DELINQUENT TAXES.

" SEC. 43. The collector must collect, in addition to " the assessments due on the delinquent list and five per " cent added, fifty cents on each lot, piece, or tract of " land separately assessed. On the day fixed for the " sale, or some subsequent day to which he may have " postponed it, of which he must give notice, the col-

" lector, between the hours of ten A. M. and three o'clock " P. M., must commence the sale of the property adver- " tised, commencing at the head of the list and con- " tinuing alphabetically, or in the numerical order of " the lots or blocks, until completed. He may post- " pone the day of commencing the sales, or the sale, " from day to day, but the sale must be completed " within three weeks from the day first fixed; provided, " that if any sale or sales shall be stayed by legal pro- " ceedings, the time of the continuance of such pro- " ceedings is not part of the time limited for making " such sale or sales; and provided further, that in any " district where the validity of any assessment shall be " in litigation at the time this Act shall take effect, the " sale of any property, whether it be involved in such " litigation or not, may be postponed for a time not to " exceed four months.

"SEC. 44. The owner or person in possession of any " real estate offered for sale for assessments due thereon " may designate, in writing, to the collector, prior to " the sale, what portion of the property he wishes sold, " if less than the whole; but if the owner or possessor " does not, then the collector may designate it and the " person who will take the least quantity of the land, " or in case an undivided interest is assessed, then the " smallest portion of the interest, and pay the assess- " ments and costs due, including two dollars for the " duplicate certificate of sale, is the purchaser. If the " purchaser does not pay the assessments and costs

" before ten o'clock A. M. the following day, the prop-
" erty on the next sale day must be resold for the
" assessments and costs. But in case there is no pur-
" chaser in good faith for the same on the first day
" that the property is offered for sale, then, when the
" property is offered thereafter for sale, and there is no
" purchaser in good faith for the same, the whole
" amount of the property assessed shall be struck off
" to the irrigation district within which such lands are
" situated as the purchaser, and the duplicate certifi-
" cate delivered to the treasurer of the district, and filed
" by him in his office. No charge shall be made for
" the duplicate certificate where the district is the pur-
" chaser, and, in such case, the collector shall make an
" entry, 'Sold to the district,' and he shall be credited
" with the amount thereof in his settlement. An irri-
" gation district as a purchaser at such sale, shall be
" entitled to the same rights as a private purchaser,
" and the title so acquired by the district, subject to
" the right of redemption herein provided, may be con-
" veyed by deed, executed and acknowledged by the
" president and secretary of said board; provided, that
" authority to so convey must be conferred by reso-
" lution of the board entered on its minutes, fixing the
" price at which such sale may be made, and such con-
" veyance shall not be made for a less sum than the rea-
" sonable market value of such property.

"SEC. 45. After receiving the amount of assess-
" ments and costs, the collector must make out in dupli-

" cate a certificate, dated on the day of sale, stating " (when known) the name of the person assessed, a " description of the land sold, the amount paid therefor, " that it was sold for assessments, giving the amount " and year of the assessment, and specifying the time " when the purchaser will be entitled to a deed. The " certificate must be signed by the collector, and one copy " delivered to the purchaser, and the other filed in the " office of the County Recorder of the county in which " the land is situated.

"SEC. 46. The collector, before delivering any cer- " tificate, must in a book enter a description of the " land sold, corresponding with the description in " the certificate, the date of the sale, purchasers' " names, and amount paid, regularly number the de- " scription on the margin of the book, and put a cor- " responding number on each certificate. Such book " must be open to public inspection, without fee, during " office hours, when not in actual use. On filing the " certificate with such County Recorder the lien of the " assessments vests with the purchaser, and is only " divested by the payment to him, or to the collector " for his use, of the purchase money and two per cent " per month from the day of sale until redemption.

" REDEMPTION OF PROPERTY SOLD FOR DELINQUENT " TAXES.

" SEC. 47. A redemption of the property sold may " be made by the owner, or any party in interest, within

" twelve months from the date of purchase; provided,
" that all land heretofore sold at delinquent tax sale
" under any of the provisions of an Act entitled 'An
" 'Act to provide for the organization and government
" 'of irrigation districts, and to provide for the acquisi-
" 'tion of water and other property, and for the dis-
" 'tribution of water thereby for irrigation purposes,'
" approved March seventh, eighteen hundred and
" eighty-seven, or the Acts supplementary thereto or
" amendatory thereof, where deeds have not been made
" and delivered, or when such deed has been made to
" the district, and the district has not disposed of the
" same, may be redeemed at any time within six
" months from January twenty-seventh, eighteen
" hundred and ninety-seven. Redemption must be
" made in gold or silver coin, as provided for the col-
" lection of state and county taxes, and when made to
" the collector he must credit the amount paid to the
" person named in the certificate, and pay it, on de-
" mand, to the person or his assignees. In each report
" the collector makes to the board of directors, he must
" name the person entitled to redemption money, and
" the amount due each. On receiving the certificate of
" sale, the County Recorder must file it and make an
" entry in a book similar to that required of the col-
" lector. On the presentation of the receipt of the per-
" son named in the certificate, or of the collector for his
" use, of the total amount of the redemption money,
" the Recorder must mark the word 'redeemed,' the

" date, and by whom redeemed, on the certificate and " on the margin of the book where the entry of the cer- " tificate is made. If the property is not redeemed " within the time herein provided, the collector, or his " successor in office, must make to the purchaser, or his " assignee, a deed of the property, reciting in the deed " substantially the matters contained in the certificate, " and that no person redeemed the property during the " time allowed by law for its redemption. The collector " shall receive from the purchaser, for the use of the " district, two dollars for making such deed.

" SEC. 48. The matter recited in the certificate of " sale must be recited in the deed, and such deed duly " acknowledged or proved is prima facie evidence that: " (a) The property was assessed as required by law; (b) " the property was equalized as required by law; (c) " that the assessments were levied in accordance with " law; (d) the assessments were not paid; (e) at a " proper time and place the property was sold as pre- " scribed by law, and by the proper officer; (f) the pro- " perty was not redeemed; (g) the person who executed " the deed was the proper officer.

" Such deed duly acknowledged or proved is (except " as against actual fraud) conclusive evidence of the " regularity of all the proceedings from the assessment " by the assessor, inclusive, up to the execution of the " deed. The deed conveys to the grantee the absolute " title to the lands described therein free of all incum- " brances, except when the land is owned by the United

" States, or this State, in which case it is prima facie " evidence of the right of possession.

" SEC. 49. The assessment book or delinquent list, " or a copy thereof, certified by the collector, showing " unpaid assessments against any person, or property, " is prima facie evidence of the assessment, the property " assessed, the delinquency, the amount of assessments " due and unpaid, and that all the forms of the law in " relation to the assessment and levy of such assess- " ments have been complied with.

" SEC. 50. When land is sold for assessments cor- " rectly imposed as the property of a particular person, " no misnomer of the owner, or supposed owner, or " other mistake relating to the ownership thereof, af- " fects the sale, or renders it void or voidable.

" SEC. 51. On the first Monday in each month, the " collector must settle with the secretary of the board " for all moneys collected for assessments, and pay the " same over to the treasurer; and within six days there- " after he must deliver to and file in the office of the " secretary a statement under oath, showing: (a) An " account of all his transactions and receipts since his last " settlement; (b) that all money collected by him as " collector has been paid. The collector shall also file " in the office of the secretary, on said first Monday in " each month, the receipt of the treasurer for the " money so paid.

"REDEMPTION OF BONDS, AND PAYMENT OF INTEREST.

"SEC. 52. Upon the presentation of the coupons " due, to the treasurer, he shall pay the same from " the bond fund. Whenever said fund shall amount to " the sum of ten thousand dollars in excess of an " amount sufficient to meet the interest coupons due, " the board of directors may direct the treasurer to " pay such an amount of said bonds not due as the " money in said fund will redeem, at the lowest value " at which they may be offered for liquidation, after " advertising in the manner hereinbefore provided for " the sale of bonds, for sealed proposals for the " redemption of said bonds. Said proposals shall be " opened by the board in open meeting, at a time to be " named in the notice, and the lowest bid for said bonds " must be accepted; provided, that no bond shall be " redeemed at a rate above par. In case the bids are " equal, the lowest numbered bond shall have the pref- " erence. In case none of the holders of said bonds " shall desire to have the same redeemed, as herein " provided for, said money shall be invested by the " treasurer, under the direction of the board, in United " States bonds, or the bonds of the State, which shall " be kept in said 'bond fund,' and may be used to re- " deem said district bonds whenever the holders thereof " may desire.

"CONSTRUCTION OF WORKS.

" SEC. 53. After adopting a plan for such canal or " canals, storage reservoirs, and works, as in this Act

" provided for, the board of directors shall give notice,
" by publication thereof not less than twenty days in
" one newspaper published in each of the counties com-
" posing the district (provided, a newspaper is pub-
" lished therein), and in such other newspapers as they
" may deem advisable, calling for bids for the construc-
" tion of such work, or of any portion thereof; if less
" than the whole work is advertised, then the portion
" so advertised must be particularly described in such
" notice. Said notice shall set forth that plans and
" specifications can be seen at the office of the board,
" and that the board will receive sealed proposals there-
" for, and that the contract will be let to the lowest
" responsible bidder, stating the time and place for
" opening said proposals, which, at the time and place
" appointed, shall be opened in public; and as soon as
" convenient thereafter the board shall let said work,
" either in portions or as a whole, to the lowest re-
" sponsible bidder; or they may reject any or all bids
" and readvertise for proposals, or may proceed to construct
" the work under their own superintendence. Contracts
" for the purchase of material shall be awarded to the low-
" est responsible bidder. Any person or persons to whom
" a contract may be awarded shall enter into a bond,
" with good and sufficient sureties, to be approved by
" the board, payable to said district for its use, for
" twenty-five per cent of the amount of the contract
" price, conditioned for the faithful performance of
" said contract. The work shall be done under the

" direction and to the satisfaction of the engineer, and " be approved by the board.

"SEC. 54. No claim shall be paid by the treasurer " until allowed by the board, and only upon a warrant " signed by the president, and countersigned by the " secretary; provided, that the board may draw, from " time to time, from the construction fund, and deposit " in the county treasury of the county where the office " of the board is situated, any sum in excess of the " sum of twenty-five thousand dollars. The County " Treasurer of said county is hereby authorized and " required to receive and receipt for the same, and place " the same to the credit of said district, and he shall be " responsible upon his official bond for the safe-keeping " and disbursement of the same, as in this Act pro- " vided. He shall pay out the same, or any portion " thereof, to the treasurer of the district only, and only " upon the order of the board, signed by the president " and attested by the secretary. The said County Treas- " urer shall report, in writing, on the second Monday " in each month, the amount of money in the county " treasury, the amount of receipts for the month pre- " ceding, and the amount or amounts paid out; said " report shall be verified and filed with the secretary " of the board. The district treasurer shall also report " to the board, in writing, on the first Monday in each " month, the amount of money in the district treasury, " the amount of receipts for the month preceding, and " the amount and items of expenditures, and said report

" shall be verified and filed with the secretary of the " board.

"SEC. 55. The cost and expense of purchasing and " acquiring property and constructing the works and " improvements herein provided for, shall be wholly " paid out of the construction fund. For the purpose " of defraying the expenses of the organization of the " district, and of the care, operation, management, " repair, and improvement of such portions of said " canal and works as are completed and in use, includ- " ing salaries of officers and employes, the board may " in lieu (either in part or in whole) of levying assess- " ments as herein provided for, fix rates of tolls " and charges, and collect the same from all persons " using said canal for irrigation and other purposes.

" SEC. 56. The board of directors shall have power " to construct the said works across any stream of water, " watercourse, street, avenue, highway, railway, canal, " ditch, or flume which the route of said canal or canals " may intersect or cross, in such manner as to afford " security for life and property; but said board shall re- " store the same, when so crossed or intersected, to its " former state as near as may be, or in a sufficient " manner not to have impaired unnecessarily its use- " fulness; and every company whose railroad shall be " intersected or crossed by said works shall unite with " said board in forming said intersections and cross- " ings, and grant the privileges aforesaid; and if such " railroad company and said board, or the owners and

" controllers of the said property, thing, or franchise so " to be crossed, cannot agree upon the amount to be " paid therefor, or the points or the manner of said " crossings or intersections, the same shall be ascer- " tained and determined in all respects as is herein pro- " vided in respect to the taking of land. The right of " way is hereby given, dedicated, and set apart, to " locate, construct, and maintain said works over and " through any of the lands which are now or may be " the property of this State; and also there is given, " dedicated, and set apart, for the uses and purposes " aforesaid, all waters and water rights belonging to " this State within the district.

" GOVERNING DIRECTORS.

" SEC. 57. The directors, when sitting as a board, " or acting under the orders of the board, shall each re- " ceive not to exceed three dollars per day, and actual " and necessary expenses paid while engaged in official " business under the order of the board. The board " shall fix the compensation to be paid to all officers " named in this Act, to be paid out of the treasury of " the district; provided, that said board shall, upon the " petition of at least fifty, or a majority of the free- " holders within such district, therefor, submit to the " electors at any general election a schedule of salaries " and fees to be paid hereunder. Such petition must be " presented to the board not less than twenty days nor " more than forty days prior to a general election, and " the result of such election shall be determined and

" declared in all respects as other elections are deter-
" mined and declared under this Act.

" SEC. 58. No director or any other officer named in
" this Act shall in any manner be interested, directly
" or indirectly, in any contract awarded or to be
" awarded by the board, or in the profits to be derived
" therefrom; and for any violation of this provision,
" such officer shall be deemed guilty of a misdemeanor,
" and such conviction shall work a forfeiture of his
" office, and he shall be punished by a fine not exceed-
" ing five hundred dollars, or by imprisonment in the
" county jail not exceeding six months, or by both such
" fine and imprisonment.

" SPECIAL ASSESSMENTS.

" SEC. 59. The board of directors may, at any time,
" when in their judgment it may be deemed advisable,
" call a special election and submit to the qualified
" electors of the district the question, whether or not a
" special assessment shall be levied for the purpose of
" raising money to be applied to any of the purposes
" provided in this Act. Such election must be called
" upon the notice prescribed, and the same shall be
" held and the result thereof determined and declared
" in all respects in conformity with the provisions of
" section thirty of this Act. The notice must specify
" the amount of money proposed to be raised and the
" purpose for which it is intended to be used. At such
" elections the ballots shall contain the words 'Assess-

" ment—Yes,' or 'Assessment—No.' If two-thirds or " more of the votes cast are 'Assessment—Yes,' the " board shall, at the time of the annual levy hereunder, " levy an assessment sufficient to raise the amount " voted.

" SEC. 60. The rate of assessments levied under the " provisions of this Act shall be ascertained by deduct- " ing fifteen per cent for anticipated delinquencies from " the aggregate assessed value of the property in the " district as it appears on the assessment roll for the " current year, and then dividing the sum voted by the " remainder of such aggregate assessed value. The " assessments so levied shall be computed and entered " on the assessment roll by the secretary of the board, " and collected at the same time and in the same man- " ner as other assessments provided for herein; and " when collected shall be paid into the district treasury " for the purposes specified in the notice of such special " election.

"INCURRING INDEBTEDNESS.

"SEC. 61. The board of directors, or other officers " of the district, shall have no power to incur any debt " or liability whatever, either by issuing bonds or " otherwise, in excess of the express provisions of this " Act; and any debt or liability incurred in excess of " such express provisions shall be and remain abso- " lutely void, except that for the purposes of organiza- " tion, or for any of the purposes of this Act, the board

" of directors may, before the collection of the first " assessment, incur an indebtedness not exceeding in " the aggregate the sum of two thousand dollars, and " may cause warrants of the district to issue therefor, " bearing interest at seven per cent per annum.

"GOVERNING THE USE OF WATER.

"SEC. 62. In case the volume of water in any " stream or river shall not be sufficient to supply the " continual wants of the entire country through which " it passes, and susceptible of irrigation therefrom, " then it shall be the duty of the water commissioners, " constituted as hereinafter provided, to apportion, in " a just and equitable proportion, a certain amount of " said water upon certain or alternate weekly days to " different localities, as they may, in their judgment, " think best for the interest of all parties concerned, " and with due regard to the legal and equitable rights " of all. Said water commissioners shall consist of " the chairman of the board of directors of each of the " districts affected.

"SEC. 63. It shall be the duty of the board of direc- " tors to keep the water flowing through the ditches " under their control to the full capacity of such ditches " in times of high water.

"SEC. 64. Navigation shall never in anywise be " impaired by the operation of this Act, nor shall any " vested interest in or to any mining water rights or " ditches, or in or to any water or water rights, or

" reservoirs or dams now used by the owners or " possessors thereof in connection with any mining " industry, or by persons purchasing or renting the " use thereof, or in or to any other property now used, " directly or indirectly, in carrying on or promoting " the mining industry, ever be affected by or taken " under its provisions, save and except that rights of " way may be acquired over the same.

"SEC. 65. Nothing herein contained shall be " deemed to authorize any person or persons to divert " the waters of any river, creek, stream, canal, or " ditch from its channel, to the detriment of any person or " persons having any interest in such river, creek, stream, " canal, or ditch, or the waters therein, unless previous " compensation be ascertained and paid therefor, under " the laws of this State authorizing the taking of pri- " vate property for public uses.

" EXEMPTION FROM TAXATION—CREATION OF FUNDS.

"SEC. 66. The rights of way, ditches, flumes, pipe- " lines, dams, water rights, reservoirs, and other prop- " erty of like character, belonging to any irrigation " district, shall not be taxed for State and county or " municipal purposes.

"SEC. 67. The following funds are hereby created " and established, to which the moneys properly belong- " ing shall be apportioned, to-wit: Bond fund, con- " struction fund, general fund.

"GENERAL PROVISIONS.

"SEC. 68. The board of directors may, at any time " after the issue of any bonds or the levy of any " assessment herein provided for, bring an action in " the Superior Court of the county wherein is located " the office of such board, to determine the validity of " any such bonds or such levy of assessments; such " action shall be in the nature of a proceeding in rem, " and jurisdiction of all parties interested may be had " by publication of summons for at least once a week " for three weeks in some paper of general circulation " published in the county where the action is pending, " such paper to be designated by the court having jur- " isdiction of the proceedings. Jurisdiction shall be " complete within ten days after the full publication " of such summons in the manner herein provided. " Any one interested may at any time before the expi- " ration of said ten days appear and by proper proceed- " ings contest the validity of such bonds or assess- " ments. Such action shall be speedily tried and " judgment rendered declaring such matter so con- " tested either valid or invalid. Either party may " have the right to appeal to the Supreme Court at " any time within thirty days after the rendition of " such judgment, which appeal must be heard and de- " termined within three months from the time of tak- " ing such appeal.

"SEC 69. If such proceeding shall have been " brought by the board of directors, then, at any time

" within thirty days after the levy of any assessment " or issue of any bonds under the provisions of this " Act, any district assessment-payer may bring an " action in the Superior Court of the county where " the office of the board of directors is located, to de- " termine the validity of any such assessment or such " bonds. The board of directors shall be made parties " defendant, and service of summons shall be made " on the members of the board personally. Said board " shall have the right to appear and contest such action. " Such action shall be speedily tried, with the right of " appeal to either party, within the time and manner " herein provided for the bringing of actions by the " board to determine such matters. Such appeal shall " be heard and determined in the manner and within " the time therein provided.

" SEC. 70. If more than one action shall be pending " at the same time concerning similar contests in this " Act provided for, they shall be consolidated and tried " together.

" SEC. 71. The court hearing any of the contests " herein provided for, in inquiring into the regularity, " legality, or correctness of such proceedings, must dis- " regard any error, irregularity, or omission which does " not affect the substantial rights of the parties to said " action or proceeding. The rules of pleading and " practice provided by the Code of Civil Procedure, " which are not inconsistent with the provisions of this " Act, are applicable to all actions or proceedings

" herein provided for. The motion for a new trial of " any such action or proceeding must be heard and de- " termined within ten days from the filing of the notice " of intention. The costs on any hearing or contest " herein provided for, may be allowed and apportioned " between the parties, or taxed to the losing party, in " the discretion of the court.

" SEC. 72. No contest of anything or matter herein " provided shall be made other than within the time " and manner herein specified.

" SEC. 73. For any willful violation of any express " duty herein provided for, on the part of any officer " herein named, he shall be liable upon his official " bond, and be subject to removal from office, by pro- " ceedings brought in the Superior Court of the county " wherein the office of the board of directors of the dis- " trict is located, by any assessment-payer of the dis- " trict.

" EXCLUSION OF LANDS.

" SEC. 74. The boundaries of any irrigation district " now organized or hereafter organized under the pro- " vision of this Act, may be changed, and tracts of land " which were included within the boundaries of such " district at or after its organization under the pro- " visions of said Act, may be excluded theref rom,in the " manner herein prescribed; but neither such change " of the boundaries of the districts nor such exclusion " of lands from the district shall impair or affect its " organization, or its right in or to property, or any of

" its rights or privileges of whatever kind or nature;
" nor shall it affect, impair, or discharge any contract,
" obligation, lien, or charge for or upon which said dis-
" trict was and may become liable or chargeable, had
" such change of its boundaries not been made, or had
" not such land been excluded from the district.

" SEC. 75. The owner or owners in fee of one or
" more tracts of land which constitute a portion of an
" irrigation district may jointly or severally file with
" the board of directors of the district a petition, pray-
" ing that such tract or tracts, and any other tracts
" contiguous thereto, may be excluded and taken from
" said district. The petition shall state the grounds
" and reasons upon which it is claimed that such lands
" should be excluded, and shall describe the boundaries
" thereof, and also the lands of such petitioner or
" petitioners which are included within such boundaries;
" but the description of such lands need not be more
" particular or certain than is required when the lands
" are entered in the assessment book by the County
" Assessor. Such petition must be acknowledged in
" the same manner and form as is required in the case
" of a conveyance of land, and the acknowledgment
" shall have the same force and effect as evidence as
" the acknowledgment of such a conveyance.

" SEC. 76. The secretary of the board of directors
" shall cause a notice of the filing of such petition to
" be published for at least two weeks in some news-
" paper published in the county where the office of the

" board of directors is situated, and if any portion of " such territory to be excluded lie within another " county or counties, then said notice shall be so pub- " lished in a newspaper published within each of said " counties; or if no newspaper be published therein, " then by posting such notice for the same time in at " least three public places in said district, and in case " of the posting of said notices, one of said notices must " be so posted on the lands proposed to be excluded. " The notice shall state the filing of such petition, the " names of the petitioners, a description of the lands " mentioned in said petition, and the prayer of said " petition; and it shall notify all persons interested in, " or who may be affected by such change of the " boundaries of the district, to appear at the office of " said board at a time named in said notice, and show " cause, in writing, if any they have, why the change " of the boundaries of said district, as proposed in said " petition, should not be made. The time to be specified " in the notice at which they shall be required to show " cause shall be the regular meeting of the board next " after the expiration of the time for the publication of " the notice.

" SEC. 77. The board of directors, at the time and " place mentioned in the notice, or at the time or times " to which the hearing of said petition may be ad- " journed, shall proceed to hear the petition, and all " evidence or proofs that may or shall be introduced by " or on behalf of the petitioner or petitioners, and all

" objections to such petition that may or shall be pre-
" sented in writing by any person showing cause as
" aforesaid, and all evidence and proofs that may be in-
" troduced in support of such objections. Such evi-
" dence shall be taken down in shorthand, and a record
" made thereof and filed with the board. The failure of
" any person interested in said district, other than the
" holders of bonds thereof outstanding at the time of
" the filing of said petition with said board, to show
" cause, in writing, why the tract or tracts of land men-
" tioned in said petition should not be excluded from
" said district, shall be deemed and taken as an assent
" by him to the exclusion of such tract or tracts of
" land, or any part thereof, from said district; and the
" filing of such petition with said board, as aforesaid,
" shall be deemed and taken as an assent by each and
" all of such petitioners to the exclusion from such dis-
" trict of the lands mentioned in the petition, or any
" part thereof. The expenses of giving said notice and
" of the aforesaid proceeding shall be paid by the person
" or persons filing such petition.

" SEC. 78. If, upon the hearing of any such petition,
" no evidence or proofs in support thereof be introduced,
" or if the evidence fail to sustain said petition, or if
" the board deem it not for the best interests of the dis-
" trict that the lands, or some portion thereof, men-
" tioned in the petition, should be excluded from the
" district, the board shall order that said petition be de-
" nied as to such lands; but if the said board deem it

" for the best interests of the district that the lands
" mentioned in the petition, or some portion thereof,
" be excluded from the district, and if no person inter-
" ested in the district show cause, in writing, why the
" said lands, or some portion thereof, should not be ex-
" cluded from the district, or if, having shown cause,
" withdraws the same, or upon the hearing fails to es-
" tablish such objections as he may have made, then it
" shall be the duty of the board to, and it shall forth-
" with, make an order that the lands mentioned and de-
" scribed in the petition, or some defined portion there-
" of, be excluded from said district; provided, that it
" shall be the duty of said board to so order, upon pe-
" tition therefor as aforesaid, that all lands so petitioned
" to be excluded from said district shall be excluded
" therefrom which cannot be irrigated from, or which
" are not susceptible to, or would not, by reason of
" being permanently devoted to uses other than agri-
" cultural, horticultural, viticultural, or grazing, be di-
" recty benefited by the actual irrigation of the same
" from a common source, or by the same system of
" works with the other lands of said district, or from
" the source selected, chosen or provided, or the system
" adopted for the irrigation of the lands of said district,
" or which are already irrigated, or entitled to be irri-
" gated, from another source or by another system of
" irrigation works; but no lands included within the
" limits of any city or town, or which shall have been
" subdivded into town lots or blocks, shall be excluded

" under the provisions of this Act.

SEC. 79. If there be outstanding bonds of the dis-
" trict at the time of the filing of said petition, the hold-
" ers of such outstanding bonds may give their assent,
" in writing, to the effect that they severally consent
" that the lands mentioned in the petition, or such por-
" tion thereof as may be excluded from said district by
" order of said board, or the decree of the Superior
" Court as hereinafter provided, may be excluded from
" the district; and if said lands, or any portion thereof,
" be thereafter excluded from the district, the lands so
" excluded shall be released from the lien of such out-
" standing bonds. The assent must be acknowledged
" by the several holders of such bonds in the same man-
" ner and form as is required in case of a conveyance
" of land, and the acknowledgment shall have the
" same force and effect as evidence as the acknowledg-
" ment of such conveyance. The assent shall be filed
" with the board, and must be recorded in the minutes
" of the board; and said minutes, or a copy thereof, cer-
" tified by the secretary of said board, shall be admiss-
" ible in evidence, with the same effect as the said
" assent, and such certified copy thereof may be re-
" corded in the office of the County Recorder of the
" county wherein said lands are situated.

" SEC. 80. In the event the said board of directors
" shall exclude any lands from said district upon petition
" therefor, it shall be the duty of the board of directors
" to make an entry in the minutes of the board, describ-

" ing the boundaries of the district, should the exclusion " of said lands from said district change the boundaries " of said district, and for that purpose the board may " cause a survey to be made of such portions of the " district as the board may deem necessary; and a certi- " fied copy of the entry in the minutes of the board " excluding any land, certified by the president and " secretary of the board, shall be filed for record in the " Recorder's office of each county within which are " situated any of the land of the district; but said " district, notwithstanding such exclusion, shall be and " remain an irrigation district as fully, to every intent " and purpose, as it would be had no change been " made in the boundaries of the district, or had the " lands excluded therefrom never constituted a portion " of the district.

" SEC. 81. If the lands excluded from any district " under this Act shall embrace the greater portion of " any division or divisions of such district, then the " office of director for such division or divisions shall " become and be vacant at the expiration of ten days " from the final order of the board excluding said lands; " and such vacancy or vacancies shall be filled by " appointment by the Board of Supervisors of the county " where the office of such board is situated, from the " district at large. A director appointed as above " provided, shall hold his office until the next regular " election for said district, and until his successor is " elected and qualified.

"SEC. 82. At least thirty days before the next "general election of such district, the board of directors "thereof shall make an order dividing said district "into three or five divisions, as the case may require, "as nearly equal in size as may be practicable, which "shall be numbered first, second, third, and so on, and "one director shall be elected by each division. For "the purposes of elections in such district, the said "board of directors must establish a convenient num- "ber of election precincts, and define the boundaries "thereof, which said precincts may be changed from "time to time, as the board of directors may deem "necessary.

"SEC. 83. A guardian and executor, or an admin- "istrator of an estate, who is appointed as such under "the laws of this State, and who, as such guardian, "executor, or administrator, is entitled to the posses- "sion of the lands belonging to the estate which he "represents, may, on behalf of his ward, or the estate "which he represents, upon being thereto properly "authorized by the proper court, sign and acknowledge "the petition in this Act mentioned, and may show "cause, as in this Act provided, why the boundaries of "the district should not be changed.

"SEC. 84. Nothing in this Act provided shall, in "any manner, operate to release any of the lands so "excluded from the district from any obligation to "pay, or any lien thereon, of any valid outstanding "bonds or other indebtedness of said district at the

" time of the filing of said petition for the exclusion of " said lands, but upon the contrary, said lands shall " be held subject to said lien, and answerable and " chargeable for and with the payment and discharge " of all of said outstanding obligations at the time of " the filing of the petition for the exclusion of said " land, as fully as though said petition for such " exclusion were never filed and said order or decree " of exclusion never made; and for the purpose of dis- " charging such outstanding indebtedness, said lands " so excluded shall be deemed and considered as part " of said irrigation district the same as though said " petition for its exclusion had never been filed or said " order or decree of exclusion never made; and all " provisions which may have been resorted to " to compel the payment by said lands of its quota " or portion of said outstanding obligations, had said " exclusion never been accomplished, may, notwith- " standing said exclusion, be resorted to to compel and " enforce the payment on the part of said lands of its " quota and portion of said outstanding obligations of " said irrigation district for which it is liable, as herein " provided. But said land so excluded shall not be " held answerable or chargeable for any obligation of " any nature or kind whatever, incurred after the filing " with the board of directors of said district of the " petition for the exclusion of said lands from the said " district; provided, that the provisions of this section " shall not apply to any outstanding bonds, the holders

" of which have assented to the exclusion of such lands " from said district, as hereinbefore provided.

" INCLUSION OF LANDS.

" SEC. 85. The boundaries of any irrigation district " now organized or hereafter organized under the pro- " visions of this Act may be changed in the manner " herein prescribed; but such change of the boundaries " of the district shall not impair or affect its organiz- " ation, or its rights in or to property; or any of its " rights or privileges of whatsoever kind or nature; nor " shall it affect, impair, or discharge any contract, ob- " ligation, lien, or charge for or upon which it was or " might become liable or chargeable, had such change " of its boundaries not been made.

" SEC. 86. The holder or holders of title, or evidence " of title, representing one half or more of any body of " lands adjacent to the boundary of an irrigation dis- " trict, which are contiguous, and which, taken together, " constitute one tract of land, may file with the board " of directors of said district a petition, in writing, pray- " ing that the boundaries of said district may be so " changed as to include therein said lands. The petition " shall describe the boundaries of said parcel or tract of " land, and shall also describe the boundaries of the " several parcels owned by the petitioners, if the peti- " tioners be the owners, respectively, of distinct parcels, " but such descriptions need not be more particular " than they are required to be when such lands are en-

" tered by the County Assessor in the assessment book. " Such petition must contain the assent of the petition- " ers to the inclusion within said district of the parcels " or tracts of land described in the petition, and of " which said petition alleges they are, respectively, the " owners; and it must be acknowledged in the same " manner that conveyances of land are required to be " acknowledged.

" SEC. 87. The secretary of the board of directors " shall cause a notice of the filing of such petition to " be given and published in the same manner and for " the same time that notices of special elections for the " issue of bonds are required by this Act to be pub- " lished. The notice shall state the filing of such peti- " tion and the names of the petitioners, a description of " the lands mentioned in said petition, and the prayer " of said petition; and it shall notify all persons inter- " ested in, or that may be affected by such change of " the boundaries of the district, to appear at the office " of said board, at a time named in said notice, and " show cause in writing, if any they have, why the " change in the boundaries of said district, as proposed " in said petition, should not be made. The time to be " specified in the notice at which they shall be required " to show cause shall be the regular meeting of the " board next after the expiration of the time for the " publication of the notice. The petitioners shall ad- " vance to the secretary sufficient money to pay the " estimated costs of all proceedings under this Act.

"SEC. 88. The board of directors, at the time and "place mentioned in the said notice, or at such other "time or times to which the hearing of said petition "may be adjourned, shall proceed to hear the petition, "and all the objections thereto, presented in writing "by any person showing cause as aforesaid why said "proposed change of the boundaries of the district "should not be made. The failure by any person in- "terested in said district, or in the matter of the pro- "posed change of its boundaries, to show cause, in "writing, as aforesaid, shall be deemed and taken as "an assent on his part to a change of the boundaries of "the district as prayed for in said petition, or to such a "change thereof as will include a part of said lands. "And the filing of such petition with said board, as "aforesaid, shall be deemed and taken as an assent on "the part of each and all of such petitioners to such a "change of said boundaries that they may include the "whole or any portion of the lands described in said "petition.

"SEC. 89. The board of directors to whom such "petition is presented, may require, as a condition pre- "cedent to the granting of the same, that the petition- "ers shall severally pay to such district such respective "sums, as nearly as the same can be estimated (the "several amounts to be determined by the board), as "said petitioners or their grantors would have been re- "quired to pay to such district as assessments, had "such lands been included in such district at the time

" the same was originally formed.

" SEC. 90. The board of directors, if they deem it " not for the best interests of the district that a change " of its boundaries be so made as to include therein " the lands mentioned in the petition, shall order that " the petition be rejected. But if they deem it for the " best interests of the district that the boundaries of " said district be changed, and if no person interested " in said district or the proposed change of its bound- " aries shows cause, in writing, why the proposed " change should not be made, or if, having shown " cause, withdraws the same, the board may order that " the boundaries of the district be so changed as to in- " clude therein the lands mentioned in said petition or " some part thereof. The order shall describe the " boundaries as changed, and shall also describe the " entire boundaries of the district as they will be after " the change thereof as aforesaid is made; and for that " purpose the board may cause a survey to be made of " such portions of such boundary as is deemed neces- " sary.

" SEC. 91. If any person interested in said district, " or the proposed change of its boundaries, shall show " cause as aforesaid why such boundaries should not be " changed, and shall not withdraw the same, and if the " board of directors deem it for the best interests of the " district that the boundaries thereof be so changed as " to include therein the lands mentioned in the petition, " or some part thereof, the board shall adopt a resolu-

" tion to that effect. The resolution shall describe the " exterior boundaries of the lands which the board are " of the opinion should be included within the boun- " daries of the district when changed.

" SEC. 92. Upon the adoption of the resolution men- " tioned in the last preceding section, the board shall order " that an election be held within said district, to deter- " mine whether the boundaries of the district shall be " changed as mentioned in said resolution; and shall fix " the time at which such election shall be held, and " cause notice thereof to be given and published. Such " notice shall be given and published, and such election " shall be held and conducted, the returns thereof shall " be made and canvassed, and the result of the election " ascertained and declared, and all things pertaining " thereto conducted in the manner prescribed by said " Act in case of a special election to determine whether " bonds of an irrigation district shall be issued. The " ballots cast at said election shall contain the words " 'For change of boundary,' or 'Against change of " 'boundary,' or words equivalent thereto. The notice " of election shall describe the proposed change of the " boundaries in such manner and terms that it can " readily be traced.

" SEC. 93. If at such election a majority of all the " votes cast at said election shall be against such " change of the boundaries of the district, the board " shall order that said petition be denied, and shall pro- " ceed no further in that matter. But if a majority of

" such votes be in favor of such change of the boun-
" daries of the district, the board shall thereupon order
" that the boundaries be changed in accordance with
" said resolution adopted by the board. The said order
" shall describe the entire boundaries of said district,
" and for that purpose the board may cause a survey
" of such portions thereof to be made as the board may
" deem necessary.

" SEC. 94. Upon a change of the boundaries of a
" district being made, a copy of the order of the board
" of directors ordering such change, certified by the
" president and secretary of the board, shall be filed for
" record in the Recorder's office of each county within
" which are situated any of the lands of the district,
" and thereupon the district shall be and remain an ir-
" rigation district, as fully, and to every intent and
" purpose, as if the lands which are included in the
" district by the change of the boundaries, as aforesaid,
" had been included therein at the original organization
" of the district.

" SEC. 95. Upon the filing of the copies of the order,
" as in the last preceding section mentioned, the secre-
" tary shall record in the minutes of the board the pe-
" tition aforesaid; and the said minutes, or a certified
" copy thereof, shall be admissible in evidence, with the
" same effect as the petition.

" SEC. 96. A guardian, an executor or an adminis-
" trator of an estate, who is appointed as such under
" the laws of this State, and who, as such guardian,

" executor, or administrator, is entitled to the posses-
" sion of the lands belonging to the estate which he
" represents, may, on behalf of his ward, or the estate
" which he represents, upon being thereunto author-
" ized by the proper court, sign and acknowledge the
" petition in this Act mentioned, and may show cause,
" as in this Act mentioned, why the boundaries of the
" district should not be changed.

" SEC. 97. In case of the inclusion of any land with-
" in any district by proceedings under this Act, the
" board of directors must, at least thirty days prior to
" the next succeeding general election, make an order
" redividing such district into three or five divisions, as
" the case may require, as nearly equal in size as may
" be practicable, which shall be numbered first, second,
" third and so on, and one director shall thereafter be
" elected by each division. For the purposes of elec-
" tions, the board of directors must establish a conven-
" ient number of election precincts in said districts, and
" define the boundaries thereof, which said precincts
" may be changed from time to time, as the board may
" deem necessary.

" REDUCTION OF BONDED INDEBTEDNESS.

" SEC. 98. Whenever the board of directors of an
" irrigation district heretofore organized, or hereafter
" organized under the provisions of this Act, shall
" determine that the authorized bonded indebtedness of
" such irrigation district is greater than such district

" is liable to need to complete its system as planned, " and there be no outstanding bonds, the board of " directors may call a special election for the purpose of " voting upon a proposition to reduce such bonded " indebtedness to such sum as the board may determine " to be sufficient for such purpose.

" SEC. 99. Notice of the said election shall be given " in the same manner as provided in section thirty of " said Act, in relation to calling special elections for " issuance of bonds. The notice of election must state " the amount of the authorized bonded indebtedness of " such district, and the amount to which it is proposed to " reduce the same; also, the date on which said election " will be held, and the polling places, as established by " said board of directors. The ballots cast at said " election shall contain the words 'For reducing " bonds—Yes,' or 'For reducing bonds—No.' When " the vote is canvassed by the board of directors and " entered of record, if a majority of the votes cast " shall be 'For reducing bonds—Yes,' then in that " event the board of directors shall only be empowered " to issue or sell such amount of bonds as was " stipulated in the said notice of such special election; " but if a majority of said votes are not 'For reducing " bonds—Yes,' then the authority to issue bonds shall " remain the same as before said special election was " held.

" SEC. 99½. In case there be outstanding bonds of " any district desiring to take advantage of the pro-

" visions of this Act concerning reduction of bonded " indebtedness, the assent of such bondholders may " be obtained to such reduction of the bonded indebt- " edness, in the same manner as provided in section " seventy-nine of this Act. If such assent is obtained " in the manner therein provided, then, and in that " event, such district shall be empowered to take " advantage of all the provisions of this Act, but " not otherwise. No reduction of the bonded indebt- " edness, as in this Act provided, shall in any manner " affect any order of court that may have been made, " adjudicating and confirming the validity of said bonds.

" LEASE OF WATER.

" SEC. 100. Whenever any irrigation district, hereto- " fore organized, or hereafter organized under the pro- " visions of this Act, in the development of its works " as by law provided, may have opportunity, without " increased expenditure, to utilize the water by it " owned or controlled, for mechanical purposes not " inconsistent with the provisions of said Act, the " board of directors may lease the same, as in this " Act hereinafter provided.

" SEC. 101. Whenever the board of directors may " desire to lease the use of water, as hereinbefore stated, " they shall pass a resolution of intention to so lease " the same. Immediately thereafter the secretary shall " cause notice of such intention to be given by pub- " lication in one newspaper published in each

" county in which lands of the district are situated, " for at least twenty days (provided, a newspaper is " published therein, otherwise in any newspaper the " board of directors may select), and, if the board thinks " proper in such other newspapers as may be deemed " advisable, calling for bids for the leasing of said " water for the purposes hereinbefore mentioned. Said " notice shall state that the board will receive sealed " proposals therefor, that the lease will be let to the " highest responsible bidder, stating the time and place " of opening said proposals.

" SEC. 102. At the time and place appointed the " board shall proceed to open the proposals in public. " As soon thereafter as may be convenient the board " shall let said lease in portions, or as a whole, to " the highest responsible bidder, or they may reject " any or all bids, and readvertise for proposals for the " same.

" SEC. 103. The rental accruing upon said lease " may vary from year to year, as shall be specified in " said lease, and shall be payable semi-annually, on " the thirtieth day of December and thirtieth day of " June of each year. All moneys collected, as in this " Act provided, shall be paid into the treasury, and be " apportioned to such funds as may be deemed advisable.

" SEC. 104. The board shall have power, as in this " Act provided, to execute a lease for any period not " exceeding twenty-five years. If at any time the " rental shall not be paid on the days hereinbefore

" mentioned, the amount of such rental then due shall " be doubled, and if not paid within ninety days there- " after, the said lease shall be forfeited to said district, " together with any and all works constructed, owned, " used, or controlled by said lessee.

" SEC. 105. Upon the letting of any lease, as in this " Act provided, the board may require the lessee to ex- " ecute a bond for the faithful performance of the cove- " nants of said lease, or give such other evidence of " good faith as in their judgment may be necessary.

" DESTRUCTION OF UNSOLD BONDS.

" SEC. 106. Whenever there remains in the hands " of the board of directors of any irrigation district " heretofore organized, or organized under the pro- " visions of this Act, after the completion of its ditch " system, and the payment of all demands against such " district, any bonds voted to be issued by said district, " but not sold, and not necessary to be sold for the " raising of funds for the use of such district, said " board of directors may call a special election for the " purpose of voting upon a proposition to destroy said " unsold bonds, or so many of them as may be deemed " best, or may submit such proposition at a general " election.

" SEC. 107. Such election shall be held in the same " manner as other elections held under the provisions " of this Act. A notice of such election shall be given " in the same manner as provided in section thirty of

" this Act in relation to calling special elections for the " issuance of bonds. The notice of election must state " the amount of the bonded indebtedness of such dis- " trict authorized by the vote of the district, the amount " of the bonds remaining unsold, and the amount pro- " posed to be destroyed, and the date on which such " election is proposed to be held, and the polling places " as fixed by the board of directors. The ballots to be " cast at such election shall contain the words 'For de- " stroying bonds—Yes,' and 'For destroying bonds— " 'No,' and the voter must erase the word 'No' in case " he favors the destruction of bonds, otherwise the word " 'Yes.'

" SEC. 108. When the vote is canvassed by the " board of directors and entered of record, if a two- " thirds majority of the votes cast should be found to " be in favor of the destruction of said bonds, then the " president of the board, in the presence of a majority " of the members of the board, must destroy the bonds " so voted to be destroyed; and the total amount of " bonds so destroyed and canceled shall be deducted " from the sum authorized to be issued by the electors " of said district, and no part thereof shall thereafter be " reprinted or reissued.

" SAVING CLAUSES.

" SEC. 109. Nothing in this Act shall be so con- " strued as to affect the validity of any district hereto- " fore organized under the laws of this State, or its " rights in or to property, or any of its rights or

" privileges of whatsoever kind or nature; but said dis-
" tricts are hereby made subject to the provisions of
" this Act so far as applicable; nor shall it affect, im-
" pair, or discharge any contract, obligation, lien, or
" charge, for or upon which it was or might become
" liable or chargeable had not this Act been passed;
" nor shall it affect the validity of any bonds which
" have been issued but not sold; nor shall it affect any
" action which now may be pending.

"SEC. 110. Nothing in this Act shall be construed
" as repealing or in anywise modifying the provisions
" of any other Act relating to the subject of irrigation
" or water commissioners, except such as may be con-
" tained in the Act, an Act entitled an Act to provide
" for the organization and government of irrigation dis-
" tricts, and to provide for the acquisition of water and
" other property, and for the distribution of water
" thereby for irrigation purposes, approved March
" seventh, eighteen hundred and eighty-seven, and the
" subsequent Acts supplementary thereto, and amend-
" atory thereof, all of which acts, so far as they may be
" inconsistent herewith, are hereby repealed.

" SEC. 111. This Act shall take effect from and
" after its passage and approval."

PART SECOND.

SPECIFICATION OF ERRORS RELIED UPON.

The following is a specification of the errors relied upon by the plaintiffs in error:

I.

The Court erred in overruling, and in not sustaining so much of the demurrer interposed by the defendant to the complaint, on the ground that said complaint does not state facts sufficient to constitute a cause of action. (Errors Assigned, *Record*, pp. 431, 447.)

II.

The Court erred in holding and deciding that the complaint is sufficient in law to support the judgment herein. (Errors Assigned, *Record* pp. 431, 447.)

III.

The Court erred in admitting in evidence the first twelve (12) paragraphs of the stipulation made by the parties hereto, as to the truth of certain facts, filed in said action on the 29th day of March, A. D. 1900, which twelve paragraphs, in substance, severally admit the following facts to be true:

1st PARAGRAPH.

That the plaintiff is and for ten years has been a citizen and resident of the State of Michigan, and that David Shepard and F. H. Shepard for ten years have

also been residents and citizens of the State of Michigan.

2nd PARAGRAPH.

That under the provisions of the Act of the Legislature of the State of California, entitled: "An Act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property and for the distribution of water for irrigation purposes", approved March 7th, 1887, an effort was made in the County of Tulare, State of California, to form an irrigation district, and such proceedings in that behalf were had that what purported to be a certified copy of the order of said Board of Supervisors, was duly filed with the County Recorder of said county on the 14th day of September, A. D. 1889, a certified copy of which certified copy is annexed to said stipulation, marked "A", which is an order made by the Board of Supervisors of the County of Tulare, and entered upon its minutes of the 2nd day of September, 1889, setting forth the result of an election held on the 24th day of August, 1889, within the proposed boundaries of said Tulare Irrigation District, to vote on the question whether or not said district should be organized, designating the persons elected to the various offices prescribed by said Act of the Legislature of March 7th, 1887, and declaring said district organized under the name of "Tulare Irrigation District".

That the persons declared by said order of the Board of Supervisors to have been elected as officers of said

district, immediately thereafter purported to organize as such officers and thereupon entered upon their duties as such officers the same as if said district had been legally organized, and as if there had been legally elected such officers, and that they and their successors in office have ever since continued to act as such officers, and to maintain the name of "Tulare Irrigation District", and in its name have caused the defendant to act as if it was in every respect legally organized as an irrigation district, under said Act of the Legislature, and in that behalf has at all such times had the name of Tulare Irrigation District printed upon a sign above the door, in front of an office in which the archives and papers of said defendant are kept; and its Board of Directors have met from time to time in such room, from the time of such purported organization thereof until the present time, weekly, and sometimes oftener, averaging twice a month.

And in the years 1891, 1892 and 1893, its Board of Directors purported to issue bonds of such Tulare Irrigation District in the sum of $500,000, being 1000 bonds of the face value of $500 each, as hereinafter stated, and levied assessments on the property claimed to be embraced in said district, purporting to act in so doing, under the said Act of the Legislature; and previous to July 1st, 1896, it assessed, levied and collected taxes upon the lands claimed to be in such district of over $100,000, and paid the same out as interest upon such

bonds; that it has engaged in litigation as plaintiff in suits, of them before the issuance of said bonds, and therein alleged that it was a corporation under the provisions of the said Act of the Legislature, and from said time of its said purported organization until the present time, whatever it has done and performed, it has done and performed in the same manner as if it had been legally organized as such district in full compliance with the law, and so continued to act and hold itself out as such corporation organized under said law.

3rd PARAGRAPH.

That the lands embraced in the limits of said district are, and always have been in the said County of Tulare.

4TH PARAGRAPH.

That after certain proceedings had been had by the Board of Directors of said defendant, the said defendant called a special election of the electors of said district at which should be submitted the question whether or not bonds of said district should be issued to the amount of $500,000; that such an election was held on June 7th, 1890; that the same was carried; and that on or about July 1st, 1890, the Board of Directors of said district ordered that bonds of said district in the sum of $500,000 be issued, divided into 1000 bonds of $500 each, numbered consecutively from one to one thousand.

5TH PARAGRAPH.

That thereupon the said Board of Directors caused

1000 bonds of said district to be printed, and each of them, together with the coupons thereto attached, were in the form as alleged in the complaint herein, a copy of one of which bonds, numbered 400, is annexed to the complaint, marked "Exhibit A".

6TH PARAGRAPH.

That said bonds were all disposed of by the said board of directors during the years 1891, 1892 and 1893.

7TH PARAGRAPH.

That as a result of the disposal of said bonds the defendant was enabled to and did build and construct an irrigation system, whereby it irrigated lands within the district, but not the whole thereof at any time.

8TH PARAGRAPH.

That the interest coupons of each of said bonds were promptly paid every six months, until July 1st, 1896.

9TH PARAGRAPH.

That no one ever brought an action to prevent the issuance of any of said bonds.

10TH PARAGRAPH.

That no suit or action was ever brought to annul or cancel or have declared void any of said bonds until after the year 1896, nor was any suit or action ever brought until after the year 1895 wherein the validity of any of said bonds was in any way questioned, nor

until after the year 1896, wherein the validity of any of said bonds 342 to 386 inclusive were in any way questioned except as to the constitutionality of the said Act of the said Legislature of March 7th, 1887, which action involving such constitutionality of such law was brought in November, A. D. 1895.

11TH PARAGRAPH.

That the plaintiff, at the commencement of this action, was the holder of the coupons in the complaint alleged to be held and owned by him, and on which this action was brought.

12TH PARAGRAPH.

That the plaintiff became the holder of the coupons on which this action is brought, some by purchase directly and others by mesne conveyance, in good faith, for the full value thereof, in the usual course of business, without any actual notice or knowledge of any defect, infirmity or invalidity of the bonds, or of any of them, to which said coupons, or any thereof, were attached, and without any actual notice or knowledge of the non-performance or non-observance of any requirements of the law necessary to their validity and so became the holder thereof under the full belief that all the requirements of the law necessary to their validity had been performed and observed and complied with. (Errors Assigned, *Record*, pp. 431, 447.)

IV.

Error in admitting in evidence a certified copy of the judgment roll in the matter of the Tulare Irrigation District. Said judgment roll is composed of documents in substance as follows:

(1) A petition by the Board of Directors of Tulare Irrigation District to the Superior Court of Tulare County, setting forth the various proceedings which had been taken with a view to the organization of the Tulare Irrigation District and the issuance of bonds by said district, and praying that said proceedings be judicially examined, approved and confirmed by the Court.

(2) An order by the Superior Court of Tulare County reciting the filing of the above mentioned petition and ordering said petition set down for hearing and the giving of notice of the filing of said petition by publication and posting.

(3) An affidavit of one Miles Ellsworth, showing the publication in the Tulare Weekly Register of the notice of the hearing of said petition.

(4) An affidavit of one Edward Oakford, secretary of the Board of Directors of Tulare Irrigation District, showing the posting of the notices of the hearing of said petition in the various precincts of said district.

(5) The findings of fact and conclusions of law of said Superior Court in said confirmation proceedings, filed September 15, 1890. Said findings of fact set

forth the taking of the various steps looking to the formation of the district, the election of officers and the issuance of bonds thereof, and the conclusions of law are to the effect that said district was regularly organized, and ever since its organization has been and still is a legal and valid irrigation district and that all the proceedings for its organization are entitled to approval and confirmation; that the proceedings of the Board of Directors of said district providing for and authorizing the sale of the bonds of said district are legal and valid and entitled to approval and confirmation; and that the proceedings, orders and resolutions of said board for the issue of the bonds of said district and the order prescribing the form of such bonds and the order for the sale of such bonds are legal and valid and entitled to approval and confirmation, and that said Board of Directors is entitled to a judgment confirming all the proceedings mentioned in said petition.

(6) The judgment of said Court in said confirmation proceeding, dated September 15, 1890, ordering, adjudging and decreeing the proceedings leading up to the organization of said district, and the proceedings leading up to the issue of the bonds of said district to be valid and legal, and that said district is a legal and valid irrigation district, having power to issue and sell the bonds of said district to the amount of $500,000, and that the bonds issued by said district are legal and valid and in proper form. (Errors Assigned, *Record*, pp. 435, 451.)

V.

The Court erred in sustaining the objection of plaintiff to the admission in evidence of the 13th paragraph of said stipulation and the facts therein set forth, and to the admission in evidence of Exhibit B therein referred to, and in refusing to admit and excluding said 13th paragraph and the facts stated therein and said Exhibit B, all of which were offered in evidence by the defendant and intervenors. Said 13th paragraph is in words and figures as follows:

"That a petition, a copy of which is hereunto annexed marked 'Exhibit B', was on the 1st day of July, 1889, filed with and presented to the Board of Supervisors of Tulare County at a regular meeting of said board, and no other petition for the organization of Tulare Irrigation District has ever been presented to or filed with said Board of Supervisors which said petition was printed and published for two weeks during the month of June, 1889, in a newspaper printed and published in said Tulare County, to-wit: the Weekly Tulare Register."

Said Exhibit B is a copy of a petition presented to the Board of Supervisors of Tulare County by parties whose names are signed to said petition and claiming to be freeholders owning land within the proposed district. In said petition it is stated that the petitioners desire to provide for the irrigation of the land within the proposed district, all of which is susceptible to one mode of irrigation by conveying the waters of Kaweah

River to said land; petitioners pray that the district described in the petition be organized as an irrigation district under the Act of March 7, 1887 (the Wright Act), and the petition contains a description by metes and bounds of the boundaries of the proposed district. (Errors Asigned, *Record* pp. 437, 453.)

VI.

Error in sustaining the objection of plaintiff to the admission in evidence of the 14th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit C therein referred to, and in refusing to admit and excluding said 14th paragraph and the facts stated therein and said Exhibit C, all of which were offered in evidence by said defendant and intervenors. Said paragraph 14 is in words and figures as follows:

" That during the time said petition was printed and published in said newspaper and immediately following and below said petition, as published, and in the same column of the paper was printed a notice, a copy of which notice is hereunto annexed and marked 'Exhibit C', and no other notice of the hearing of said or any petition for the organization of Tulare Irrigation District, was ever given or published. Said notice was in the same type as said petition in said publication, and enclosed therewith, between two blank lines across the column, the first at the head of such petition, and the last at the end of such notice."

Said Exhibit C is in words and figures as follows:

"NOTICE.

"Pursuant to the statutes in such cases made and provided, notice is hereby given that the above and foregoing petition will be presented to the Board of Supervisors in and for the County of Tulare, at their first regular meeting, in the month of July, 1889, to-wit: On Monday the 1st day of July, 1889, at which time any person or persons desiring so to do, may present their objections, if any they have, why said petition should not be granted." (Errors Assigned, *Record* pp. 438, 454.)

VII.

Error in sustaining the objection of plaintiff to the admission in evidence of the 15th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit D therein referred to, and in refusing to admit and excluding said 15th paragraph and the facts stated therein and said Exhibit D, all of which were offered in evidence by said defendant and intervenors. Said 15th paragraph is in words and figures as follows, to-wit:

"That at the time of the presentation of said petition, the said Board of Supervisors caused to be entered on the minutes of said board, the order set forth in paragraph VIII on page 17 of the defendant's answer herein, and on July 6th, 1889, said board caused to be entered on its said minutes, an order, a copy of which

is alleged in said paragraph VIII to have been entered by said board on that date, and thereafter, on July 11th, 1889, said board caused to be entered on its minutes the order hereunto annexed, marked 'Exhibit D'."

Said order referred to in said 15th paragraph as appearing on page 17 of the defendant's answer, is an order entered on the minutes of the Board of Supervisors of Tulare County on July 1, 1889, and is to the effect that a petition praying for the formation of an irrigation district to be known as the Tulare Irrigation District having been filed and presented to the board, and the necessary bond having been filed with said petition, and it satisfactorily appearing to the board that due notice of the presentation of said petition had been given as required by law, and certain persons having appeared and asked to have their lands excluded from the district, thereupon the board ordered that the hearing of the said petition be set for Saturday, July 6th, 1889, at 10 A. M. Said order referred to as entered on July 6th is an order stating that "the board occupied the day in hearing testimony to have lands excluded from said district."

Said Exhibit D referred to in said 15th paragraph is a copy of an order of the Board of Supervisors of Tulare County made after the hearing of the petition for the formation of the Tulare Irrigation District. Said order recites the proceedings taken in connection with the petition, including the publication of the notice of the hearing thereof and the fact that certain parties

had been heard upon the question whether their lands should be excluded from the district. Said order then proceeds to declare and establish the boundaries of the proposed irrigation district and describes them by metes and bounds, with a specific description of certain lands excepted and taken out of the proposed district as thus described. The order further provides for the division of the proposed district into five divisions, and describes the boundaries of each division. It further orders an election for the purpose of determining whether the proposed district shall be organized, and names the time and the various polling places. The order further provides for notice of such election and names the offices of the proposed district which are to be filled by officers to be voted for at said election, and concludes by describing five election precincts. (Errors Assigned, *Record* pp. 439, 455.)

VIII.

Error in sustaining plaintiff's objection to the admission in evidence of paragraph 16th of said stipulation and the facts therein set forth and to the admission of Exhibit E therein referred to, and in refusing to admit and excluding said 16th paragraph and the facts stated therein and said Exhibit E, all of which were offered in evidence by said defendant and intervenors. Said paragraph 16 is in words and figures as follows, to-wit:

"That on the 2nd day of September, 1899, the clerk

of said Board of Supervisors, entered upon their minutes an order purporting to have been passed by said board, a true copy of which order in full, is hereunto annexed, and marked 'Exhibit E'."

Said Exhibit E referred to in said 16th paragraph is a copy of an order of the Board of Supervisors of Tulare County, by which said Board of Supervisors declare the result of their canvass of the election held for the purpose of voting for and against the organization of the Tulare Irrigation District and for officers thereof. In this order the Supervisors make a statement of the votes cast for and against the organization of the district, showing the result to be in favor of organizing the district, and a further statement of the number of votes cast for the various officers of the district. The order then declares the territory embraced within certain limits, which are specifically described by metes and bounds, to be an irrigation district, duly organized under the name and style of Tulare Irrigation District, and further declares the election of certain named parties as officers of the district. (Errors Assigned, *Record* pp. 440, 456.)

IX.

Error in sustaining the objection of plaintiff to the admission in evidence of the 17th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 17th paragraph and the facts stated therein, all of which were offered in evidence by said defendant and intervenors. Said 17th

paragraph is in words and figures as follows, to wit:

"That said petition so presented July 1st, 1889, was not copied or set out at length in the minutes of the said Board of Supervisors, nor in any way referred to or identified than as appears in the orders of said board hereinbefore set forth and hereto annexed." (Errors Assigned, *Record* pp. 441, 457.)

X.

Error in sustaining objection of plaintiff to the admission in evidence of the 18th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit A therein referred to, and in refusing to admit and excluding said 18th paragraph and the facts stated therein and the said Exhibit A, all of which were offered in evidence by said defendant and intervenors.

Said paragraph 18 is in words and figures as follows, to wit:

"That said board caused to be filed for record in the office of the recorder of said Tulare County, on September 14, 1889, the certified copy of the order hereunto annexed marked 'Exhibit A', hereinbefore referred to, and no other order of said board relating to the organization of said district was ever filed in the office of the county recorder of said Tulare County. That an election was called and held as recited in said 'Exhibit A', of which due notice was given, and in such notice the lands of such proposed district were the same as those recited in said 'Exhibit A' as constituting

such proposed district."

Said Exhibit A is a copy of an order of the Board of Supervisors entered on its minutes of September 2d, 1889, declaring said district organized and designating the persons elected as officers thereof. (Errors Assigned, *Record* pp. 441, 458.)

XI.

Error in sustaining the objection of plaintiff to the admission in evidence of the 19th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 19th paragraph and the facts stated therein, all of which were offered in evidence by said defendant and intervenors. Said 19th paragraph is in words and figures as follows, to wit:

"No other orders or proceedings relating to the organization of said district, were ever made or had by said Board of Supervisors, than as herein stipulated and as recited in said exhibits." (Errors Assigned, *Record* pp. 442, 458.)

XII.

Error in sustaining the objection of plaintiff to the admission in evidence of the 20th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 20th paragraph and the facts stated therein, all of which were offered by said defendant and intervenors.

Said paragraph 19 is in words and figures as follows, to wit:

"That G. G. Kelly and B. W. Jauchius are the

owners of lands alleged in said complaint in intervention, as therein stated; that said G. G. Kelly is a citizen of the United States and a resident of the State of Massachusetts, and that said B. W. Jauchius is a citizen of the United States and a resident of the State of California." (Errors Assigned, *Record* pp. 443, 459.)

XIII.

Error in sustaining the objection of plaintiff to the introduction in evidence of a certified copy of the judgment roll in the matter of the Tulare Irrigation District. Said judgment roll is composed of documents in substance as follows:

(1) A petition by the Board of Directors of Tulare Irrigation District to the Superior Court of Tulare County, setting forth the various proceedings which had been taken with a view to the organization of the Tulare Irrigation District and the issuance of bonds by said district, and praying that said proceedings be judicially examined, approved and confirmed by the Court.

(2) An order by the Superior Court of Tulare County reciting the filing of the above mentioned petition and ordering said petition set down for hearing and the giving of notice of the filing of said petition by publication and posting.

(3) An affidavit by one Miles Ellsworth, showing the publication in the Tulare Weekly Register of the notice of the hearing of said petition.

(4) An affidavit of one Edward Oakford, Secretary

of the Board of Directors of Tulare Irrigation District, showing the posting of the notices of the hearing of said petition, in the various precincts of said district.

(5) The findings of fact and conclusions of law of said Superior Court in said confirmation proceedings, filed September 15, 1890. Said findings of fact set forth the taking of the various steps looking to the formation of the district, the election of officers and the issuance of bonds thereof, and the conclusions of law are to the effect that said district was regularly organized, and ever since its organization has been and still is a legal and valid irrigation district; and that all the proceedings for its organization are entitled to approval and confirmation; that the proceedings of the Board of Directors of said district providing for and authorizing the sale of the bonds of said district are legal and valid and entitled to approval and confirmation; and that the proceedings, orders and resolutions of said board for the issue of the bonds of said district and the order prescribing the form of such bonds and the order for the sale of such bonds, are legal and valid and entitled to approval and confirmation, and that said Board of Directors is entitled to a judgment confirming all the proceedings mentioned in said petition.

(6) The judgment of said Court in said confirmation proceeding, dated September 15, 1890, ordering, adjudging, and decreeing the proceedings leading up to the organization of said district, and the proceedings leading up to the issue of the bonds of said district, to

be legal and valid, and that said district is a legal and valid irrigation district, having power to issue and sell the bonds of said district to the amount of $500,000, and that the bonds issued by said district are legal and valid and in proper form.

(7) An answer by B. W. Jauchius, J. L. Gould, George C. Kelly and Ralph Jones, to the said petition in said confirmation proceeding. Said answer contains denials of the various allegations in said petition, and sets up the invalidity of the proceedings leading to the organization of the district and the invalidity of the proceedings leading up to the issuance of the bonds of said district, upon the various grounds specifically set forth in said answer, and prays that the approval and confirmation of the proceedings had by the Directors of said district as alleged in the petition be denied by the Court; that a decree may be had that said district was illegally organized and void: and that all the bonds issued by said district as set forth in the petition be declared void.

(8) The opinion of the Judge of the Superior Court stating the reasons relied upon by the Court for setting aside the decree of confirmation hereinabove mentioned, and for entering a decree declaring the district illegal.

(9) Findings of fact and conclusions of law, dated November 23, 1898. These findings set forth various defects in the proceedings leading to the organization of the district and in the proceedings leading to the

issuance of the bonds, and as conclusions of law from the facts thus found, the Court finds that the Tulare Irrigation District is not legally organized, is not a valid irrigation district, and that the proceedings of the Board of Directors in providing for and authorizing the issue and sale of the bonds of said district to the amount of $500,000, are illegal and void, and that the order prescribing the form of such bonds and the order for the sale of such bonds to the amount of $200,000, are illegal and void, and that the petitioners in the confirmation proceeding are not entitled to a judgment approving and confirming the proceedings mentioned in their petition, and that the defendants are entitled to a judgment denying such confirmation and adjudging and decreeing that the proceedings had for the formation of such district, and all proceedings had since such formation, including the issue and sale of its bonds, are illegal and void.

(10) The judgment in said confirmation proceeding, dated November 23, 1898, adjudging that the Tulare Irrigation District never was and is not a duly or legally organized irrigation district; that all of the proceedings by which said district was organized are null and void; that all the proceedings taken by the Directors of the district for the purpose of the issue and sale of the bonds of said district to the amount of $500,000, are null and void, and that approval of the aforementioned proceedings is denied; and further adjudging and decreeing that the said district has never been, since its

attempted organization, and is not, a legally organized irrigation district, and had and has no power to issue or sell the bonds of said district, create indebtedness or perform any of the functions of an irrigation district. (Errors Assigned, *Record* pp. 443, 459.)

XIV.

The Court erred in denying the motion on the part of the defendant and intervenors to set aside and vacate the findings in favor of plaintiff, and to make and enter findings in favor of the defendant on the ground that there was no evidence whatever to justify the findings in favor of plaintiff. (Errors Assigned, *Record* pp. 446, 462.)

PART THIRD.

BRIEF OF ARGUMENT.

I.

THE ATTEMPTED ORGANIZATION OF THE TULARE IRRIGATION DISTRICT WAS A MERE NULLITY, BECAUSE OF FATAL DEFECTS IN THE PROCEEDINGS. THE BOARD OF SUPERVISORS OF TULARE COUNTY NEVER ACQUIRED JURISDICTION TO TAKE ANY ACTION UPON THE PETITION FOR ORGANIZATION BECAUSE THE NOTICE REQUIRED BY SECTION TWO OF THE WRIGHT ACT (STATS. 1887, p. 29) TO BE PUBLISHED WITH THE PETITION "STATING THE TIME OF THE MEETING" OF THE BOARD AT WHICH THE SAME WOULD BE PRESENTED, IS JURISDICTIONAL, AND IT WAS NEVER PUBLISHED.

The only notice published with the petition in the same column therewith, immediately following the petition, was in the words and figures following, to wit:

" Pursuant to the statute in such case made and pro-
" vided, notice is hereby given that the above and fore-
" going petition will be presented to the Board of Su-
" pervisors, in and for the County of Tulare, at their
" first regular meeting in the month of July, 1889, at
" which time any person or persons desiring so to do
" may present their objection, if any they have, why
" said petition should not be granted." (*Record* p. 253, 236, 300.)

The notice passed upon in the *Central Irrigation District case* (117 Cal. 382), like the one in the *Tulare*

case, was without date and without the signature of any petitioner and was in the following words and figures, to wit:

"The foregoing petition will be presented to the Hon-
" orable Board of Supervisors of Colusa County, Cali-
" fornia, on Monday, October 10th, 1887, at 10 o'clock
" A. M. of that day."

Upon a full review of the authorities, by the Supreme Court of California in the case of the *Central Irrigation District* (*supra*), such notice was held insufficient to vest jurisdiction in the Board of Supervisors to proceed on the petition for organization, because of the absence therefrom of the signature of the petitioners.

In *Doer* v. *Southwestern Mut. Life Assn.*, 60 N. W. Rep. 225 (s. c. 92 Ia. 39), it was contended by the respondent that what was claimed to be a notice of appeal, served and filed in the case, was void because it was without signature. The appellant claimed that the statute providing for the service and the filing of the notice, did not require the notice to be signed; that at most, the notice was defective; and that as the respondent had appeared in response thereto, and assigned the case on the merits, he had waived the defects, if any, in the notice. The Court said (p. 226):

" While the statute does not, in terms, require the
" notice to be signed, yet we think this is essential to
" its validity. It must purport to emanate from some
" one in order that the adverse party may be advised
" that it comes from a proper source. To be binding

" upon the appellant, it ought to be subscribed either " by himself or some one authorized to act for him. " Without such attestation the document is, in effect, " no more than a blank piece of paper. It is not a case " of defective notice, but of no notice. *Wade, Notice*, " Sec. 1209; *Larrabee* v. *Morrison*, 15 Minn. 196 (Cil. " 151); *Eaton* v. *Manitowoc Co.*, 42 Wis. 317. The plain- " tiff, through his attorneys, accepted service of the " paper upon him, and it is urged that he is now es- " topped from taking advantage of the objection. If " the defect was a mere irregularity, there would be " much force in this position; but as the notice is juris- " dictional, and cannot, as we shall hereafter show, be " waived by the parties, the contention is without merit " (*Larrabee* v. *Morrison*, *supra*)."

In the *Central case*, *supra*, speaking of the notice prescribed by the Wright Act, the Court said (p. 390):

" The publication of this notice is an essential pre- " requisite to conferring upon the Board of Supervisors " jurisdiction to proceed in the matter of the organiza- " tion. It is by the terms of the Act made mandatory " that such notice should be given. The notice when " given is the process by which property owners to be " affected are notified and given an opportunity to pre- " sent their objections to the Board of Supervisors. The " Board of Supervisors acts in the matter as a court of " special and limited jurisdiction."

See *Finch* v. *Tehama Co.*, 29 Cal. 453, 457;
Williams v. *Bergin*, 108 Cal. 166.

In the *Central case*, the Court said further (117 Cal. pp. 390–391):

" The act does not in express terms declare by whom " the notice is to be given, but it may be derived there- " from, by intendment as clear and explicit as though " express language had been used, that the petitioners " themselves are the persons, and the only persons em- " powered to perform and charged with the performance " of this duty. The petitioners are to present their " petition at a regular meeting of the board, and only " upon such presentation, after notice, does the board " acquire official knowledge of the proposition, with " power to act upon it. But, before such petition is " presented, it shall have been published for at least " two weeks. Clearly it is not for the Board of Super- " visors to cause the publication. Its functions do not " begin until after the publication has been completed. " The petitioners, then, and no others, are to give the " notice."

II.

THAT THE BOARD OF SUPERVISORS HAS ACQUIRED JURISDICTION TO PROCEED WITH THE ORGANIZATION PROCEEDINGS UPON THE PRESENTATION TO IT OF THE PETITION FOR ORGANIZATION, MUST APPEAR ON THE FACE OF ITS RECORD; AND CANNOT BE ALLOWED TO REST IN PAROLE TO BE ESTABLISHED IN ONE CASE AND DISPROVED IN ANOTHER.

Henning v. *Planter's Ins. Co.*, 28 Fed. Rep. 440, 443;
Montgomery v. *Merrill*, 36 Mich. 97; s. c. 25 Mich. 73;
cf. *LeRoy* v. *Jamison*, 3 Sawyer 369, 389.

The record of the board should show on its face that at the time it proceeded to act upon the petition proof was made to it by competent evidence that the notice had been given and published as required by the act.

Truax v. *Sterling*, 74 Mich. 160; s. c. 41 N. W. Rep. 885.

This must be so independent of the rule that the validity of the proceedings of the tribunals of special and limited jurisdiction must appear on the face of their records (*Armijo* v. *Board of Comr.*, 7 Pac. Rep. 19; s. c. 3 N. Mex. 297), where the tribunal is required by the law of its creation to keep a record of all its proceedings.

Johnson v. *Wakulla Co.*, 28 Fla. 720; s. c. 9 Southern Rep. 691;
Milton v. *Drain Comr.*, 40 Mich. 229.

In the *Florida case*, the Court, speaking of the county commissioners, said (9 So. Rep. 693):

"They * * * are clothed by law with numerous "important powers, quasi judicial and quasi legislative "* * * and even if they were not expressly required "by law to keep a record of their official acts and pro- "ceedings, we are decidedly of the opinion that the very "nature and importance of their official duties renders "it entirely indispensable that they should keep such "record, and with accuracy."

In *Milton* v. *Drain Comr.*, 40 Mich. 229, the Court, in speaking of the duty of special commissioners in the matter of the condemnation of land for ditch purposes, said (p. 231):

"It was not necessary that the statute should ex- "pressly direct what should be a matter of record and "how the record should be made up. The common "law applies and it determines that in all such pro- "ceedings which are quasi judicial every substantial "ingredient should be set down in *writing*."

In *Small* v. *Pennell*, 31 Maine 267, relating to certain proceedings for the location of a highway, the Court, in speaking of the county commissioners and in rejecting certain parole testimony offered, said (p. 272):

"The parole testimony is offered, not to prove a lost "record but as a substitute for the record itself. This "is inadmissible. The acts and doings of the com- "missioners must be manifested by their records, "which, if lost or destroyed, may be proved by parole "evidence. But it is not suggested that their records "have been lost. There is an omission to record what

" is essential in order to give validity to their acts."

In *Vestal* v. *Morris*, 39 Pac. Rep. 960 (s. c. 11 Wash. St. 960), was involved the validity of a tax deed; and it was held that where it was the duty of the county treasurer to give notice that the duplicate assessment roll was in his hands and of the date when the taxes must be paid, the county records must show that some notice was given, although there was no statute requiring proof of notice to be preserved.

The Court said (pp. 961–962):

"It was also imperative that the county treasurer " should give the notice required by the statute that " the duplicate assessment roll was in his hands, and " giving the date when the taxes must be paid. It is " contended by appellants that there was no statute " requiring the proof of the giving of this notice to be " preserved, and that the presumption is that the notice " was in fact given. But independent of any specific " provision of the statute, it was necessary that some " proof of the giving of the notice should be preserved " in the county records."

See *Doody* v. *Vaughn*, 7 Neb. 28, 29;
Bedell v. *Scott*, 126 Cal. 676.

In the minutes of the Board of Supervisors of July 1st, 1889, it is recited:

"And it satisfactorily appearing to this board that " due notice of the presentation of said petition has been " given, as required by law," etc. (*Record* p. 34.)

In its minutes of July 11th, 1889, it is *found* by the board:

"That after said petition was signed by said peti-
" tioners and before the same was presented to this
" board, as hereinafter stated, said petition together
" with a notice stating that said petition would be pre-
" sented to this board on Monday, the 1st day of July,
" 1889, was duly published for three weeks next before
" said 1st day of July, 1889, in the 'Weekly Tulare
" Register', a weekly newspaper printed and published in said Tulare County." (*Record* p. 255.)

The foregoing is all that appears with respect to the supposed publication of a notice of the time when said petition would be presented to the board. But the whole of it is insufficient.

Was the notice signed by any one?

Was it signed by all the petitioners or by a few only?

Who caused or directed the notice to be published with the petition?

Was the notice, and the petition as well, published by the Weekly Tulare Register, merely as a matter of news?

Who selected that paper for the publication?

No one of these questions is answered by the record.

It is the petitioners alone who can cause or direct the publication to be made. They have sole control

of the matter until the petition is presented to the board.

People v. *Town of Linden*, 107 Cal. 94, 98;
In re Central Irrigation Dist., 117 Cal. 382, 390, 391;
City of Napa v. *Easterby*, 61 Cal. 509–517, and cases there cited.

The petitioners had exclusive discretion in the selection of the newspaper for publication, and a publication in a newspaper not designated by them would be only a matter of news and a nullity as notice.

Powers Appeal, 29 Mich. 504, 508–509;
People v. *Board*, 49 Cal. 684;
People v. *Williams*, 64 Cal. 87, 92;
Moran v. *Darby*, 56 N. W. Rep. 347; s. c. 97 Mich. 186.

There is no logical connection between the fact of publication and the fact that the newspaper in which the notice is published, if designated, would have been a proper medium for the giving of the notice, from which the conclusion can be drawn either that the newspaper was designated or that some one legally authorized to do so directed the publication to be made in such newspaper.

Becker v. *Commissioners*, 11 Mont. 490; s. c. 28 Pac. Rep. 1116.

III.

THE CONCLUSIONS OF THE BOARD OF SUPERVISORS CONCERNING ANY JURISDICTIONAL FACT ARE OPEN TO ATTACK IN A COLLATERAL PROCEEDING; AND THUS, EVEN IF THE RECITALS OF NOTICE WERE NOT INSUFFICIENT, THEY COULD NOT PRECLUDE INQUIRY AS TO THEIR TRUTH.

A judicial tribunal cannot conclusively determine the existence of facts essential to its jurisdiction. It is permissible, even in a collateral action, to show the non-existence of any fact which is indispensable to the acquisition of jurisdiction, and we maintain that the better doctrine, and that which has been recognized as correct by this Court, is that the records of no tribunal can import such verity as to preclude a party whose rights are affected by a judgment from setting up and proving that the Court never obtained jurisdiction, and that the purported judgment is a nullity.

Ferguson v. *Crawford*, 70 N. Y. 253;
Beaudrias v. *Hogan*, 48 N. Y. Sup. 468;
Mastin v. *Gray*, 19 Kansas 458;
Goudy et al. v. *Hall*, 30 Ill. 109;
Thompson v. *Whitman* 18 Wall. 457;
Harris v. *Hardeman*, 14 How. (U. S.) 334;
Webster v. *Reid*, 11 How. (U. S.) 437.

A *fortiori*, it must be permissible, even in a collateral action, to prove the falsity of recitals, as to jurisdictional facts, appearing in the records of an inferior tribunal of special and limited jurisdiction.

"The general principle is that the proceedings of

" magistrates and officers having special and limited " jurisdiction, must bear on their face the evidence of " their jurisdiction or they will be judged invalid, and " that in collateral actions their judgment may be " questioned and disregarded, if it appears that in fact " they had no authority to act in a given case."

National Bank v. *City of Elmira*, 53 N. Y. 54.

This principle has been recognized and applied by this Court. In *Ogden City* v. *Armstrong*, 168 U. S. 224, it was held, that the finding of a city council concerning a fact upon which their jurisdiction depended, might be questioned collaterally. The jurisdictional question involved in that case was whether the assent of property owners to a certain street improvement had been obtained. It was argued that the city council acquired jurisdiction by publishing its notice of intention to make the improvement, and that it had authority to decide whether the requisite proportion of property holders had failed to protest. But the Court held (see page 235) that the fact of consent by the requisite number was jurisdictional and in the nature of a condition precedent to the exercise of the power in question, and that the finding of the council on this question was not conclusive as against those who duly protested.

The case of *Mulligan* v. *Smith*, 59 Cal. 206, is cited with approval (see 168 U. S. at p. 236). In that case it was held that no one can be concluded by the determination by a public board of a question upon which its

own jurisdiction depended.

In *Allen* v. *City of Portland*, 58 Pac. Rep. 509, it is held that, in a case where the filing of a petition signed by the requisite number of property holders is a condition precedent to the acquisition of jurisdiction by a city council to make a public improvement, the decision of the council as to whether such a petition has been filed is open to collateral attack. The principle is stated by the Court as follows (p. 512):

"The question as to its jurisdiction to act in any "given case, like courts of limited, special and inferior "jurisdiction, is always open to inquiry; and in any "event its decision or determination may be attacked "collaterally for lack of jurisdiction. It cannot legally "assume to act until the facts exist upon which its "jurisdiction depends, and no decision or determination "that it has it can avail in the absence of such facts."

In *Auditor-General* v. *Fisher*, 84 Mich. 128 (s. c. 47 N. W. Rep. 574), it was held that the question whether or not the requisite number of persons have signed a petition for the improvement of a street, when the power to make it depends upon the signatures to the petition of a given number or proportion of the property holders to be affected, can be inquired into, and the want of such number of signatures shown as a defense in an action to collect the assessment for such improvement, if the statute governing the proceeding does not provide that the determination of the proper

municipal board shall be conclusive on the subject.

See also

Kahn v. *Supervisors*, 79 Cal. 388;
People v. *Hagar*, 49 Cal. 232;
Lent v. *Tillson*, 72 Cal. 422;
In re Madera District, 92 Cal. 296;
Reclamation Dist. v. *Phillips*, 108 Cal. 306.

In the foregoing cases the jurisdictional fact in question related to some petition or other mode of consent on the part of parties affected by the proposed work or improvement. But the same principle which controls cases of this character must apply to cases involving such a jurisdictional defect as the failure to publish the notice of the petition for the formation of an irrigation district, as required by the Act of 1887. In the *Central case* (117 Cal. 382), it is held that until the petitioners have published their petition in the manner prescribed by the statute, the Board of Supervisors can acquire no jurisdiction whatever; that the publication is an indispensable condition precedent to any right or authority on the part of the board to take any steps whatever in the matter. It follows that the determination of the Board of Supervisors as to whether a proper notice has been published can no more be conclusive of the question, than can their decision as to whether the petition was such as the statute demands, be conclusive of that question. For the same reason and upon the same principle that the presentation to the supervisors of a document purporting to be a petition signed by parties

possessing the statutory qualifications is not enough to give the board jurisdiction to conclusively determine whether the petitioners do possess the qualifications, it must be true that the filing of a petition cannot be sufficient to give to the board authority to conclusively determine whether or not such a publication of the petition as is necessary to confer jurisdiction has been made. In one case just as much as in the other, to hold the determination of the supervisors conclusive would be to violate the rule that a tribunal of this kind cannot by its own decision as to facts upon which its jurisdiction depends shut off all collateral investigation of the question whether or not these facts exist.

In the *Falbrook case* (164 U. S. 112) this Court refers to the sufficiency of the petition as on the same footing as any other jurisdictional fact. It is said (p. 169) that

" It may be that the action of the board upon any " question of fact as to contents or sufficiency of the " petition, or upon any other fact of a jurisdictional " nature, is open to review in the state courts."

It is submitted that there is no reason for any difference between the effect of the decision of the supervisors as to the sufficiency of the petition, and the effect of their decision as to any other jurisdictional fact, such as, for example, the publication of notice of the hearing of the petition; and that, therefore, the case of *Ogden City* v. *Armstrong* (*supra*), is fully in point here, in support of the proposition that nothing in the records of the Board of Supervisors should be

allowed to prevent us from showing that, as a matter of fact, no notice of the hearing of the petition for the formation of the Tulare district, such as the law requires, was ever given.

IV.

THE FACT THAT THE SUPREME COURT OF CALIFORNIA IN THE CASE OF IRRIGATION CO. V. DELAPPE (79 CAL. 351) TREATED AS VALID PROCEEDINGS FOR THE FORMATION OF A DISTRICT, IN WHICH PROCEEDINGS THE SAME DEFECT IN THE NOTICE EXISTED AS THE DEFECT HERE RELIED UPON, CANNOT, IN THE CASE AT BAR, PRECLUDE THE PLAINTIFFS IN ERROR FROM RELYING UPON THIS DEFECT. THE POINT AS TO THE SUFFICIENCY OF THE NOTICE WAS NOT RAISED OR CONSIDERED IN THE DELAPPE CASE; AND AS TO THIS POINT THE DECISION WAS NOT A CONSTRUCTION OF THE STATUTE WITHIN THE SCOPE OF THE PRINCIPLE ESTABLISHED BY THIS COURT IN GELPCKE V. CITY OF DUBUQUE (1 WALL. 175) TO THE EFFECT THAT IF A CONTRACT WHEN MADE IS VALID BY THE LAWS OF THE STATE AS THEN CONSTRUED BY THE COURTS OF THE STATE, IT CANNOT BECOME INVALID BY REASON OF A SUBSEQUENT DECISION OF THE SAME COURT ADOPTING A DIFFERENT CONSTRUCTION.

The doctrine of the *Gelpcke case* is that in cases where the validity of a contract depends upon a State law, the rights of the parties to the contract must be determined according to the law as construed by the highest Court of the State at the time the contract was made. But it was

evidently not intended to treat a law as judicially construed as to a point which had never been presented to or considered by the courts. The points relating to the construction of the Iowa constitution which were treated by this Court in the *Gelpcke case* as settled by the decisions of the State Supreme Court, were all points which had been expressly and fully passed upon and discussed by that Court. And so in all the cases which follow this leading case, the judicial construction which is treated as the basis of rights that cannot be affected by subsequent decisions, is a construction actually made by the Court, and not something read into the opinion by mere implication, on the theory that when a court sustains a certain transaction, it impliedly declares it to be free from all possible objections, and in conformity to the law in every conceivable respect. But it cannot be that whenever a court chances to overlook some defective feature of a proceeding it must be understood as announcing by implication that the law is to be construed as tolerating this particular feature. No one is warranted in relying on a decision as an authority, except as to points which the court has considered. As to all points not presented or noticed the decision is silent and inoperative, and as to such matters, the law remains unconstrued. When the point is raised and decided in a later case, no question of a change of construction arises, for until the later decision, there is no construction of the law on the point in question.

In the *Central Irrigation District case* (117 Cal. 382), the decision in the *DeLappe case* was set up as a conclusive adjudication in favor of the validity of the bonds of the district. But the Court held that the decision was merely an adjudication that the propositions advanced in that case presented no valid legal objection to the organization of the district. "It "does not follow", says the Court (p. 388), "that "inquiry as to other matters is foreclosed, and that "the judgment in the *DeLappe case* is *res adjudicata* "upon questions not presented or considered in that "case. * * * "

In *Nickey* v. *The Stearns Ranchos Co.*, 126 Cal. 150, the Court held a statute to be unconstitutional although it had sustained the same statute in a prior case. The reason given for this course was thus stated in the opinion (153):

"We are not unmindful that this statute was "attacked in *Holly* v. *County of Orange*, 106 Cal. 420, "and that its constitutionality was there upheld; but "the points here presented were not in that case "raised or considered. That determination was a "decision, not generally as to the validity of the act, "but merely that it was valid against the specific "grounds of attack urged."

Alferitz v. *Borgwardt*, 126 Cal. 201, is a case which supports and illustrates the proposition that the scope of a decision cannot be extended by mere implication so as to make it an authority on points overlooked by

the Court. In that case it was held that a prior decision to the effect that a chattel mortgage passed the legal title to the mortgagee, could not be treated as a judicial determination that Section 2888 of the Civil Code of California was compatible with such a theory. The Court in the earlier case had overlooked this section of the Code, and thus had rendered a decision which implied that the Code was consistent with the view that a chattel mortgage vests the title to the property mortgaged in the mortgagee. It was argued that this amounted to a construction of Section 2888. But in response to this suggestion the Court said (p. 207): "No allusion is made to Section 2888, but it is con- "tended that such section was thereby construed to " mean exactly the opposite of its express and unambig- " uous declaration. Certainly it was not a construc- " tion, but a failure to note the statute."

In *Boyd* v. *Alabama*, 94 U. S. 645, a question arose as to the constitutionality of an act of the Legislature of Alabama authorizing certain named persons (among whom was Boyd, the plaintiff in error) to carry on certain enterprises, among which it was claimed by Boyd that the enterprise of selling lottery tickets was included. Boyd was indicted and prosecuted for selling these tickets. It was admitted that the acts with which he was charged came within the scope of the above mentioned statute, but it was contended that the act was unconstitutional. The Supreme Court of Alabama had previously decided that the statute constituted a

contract with Boyd and that the legislature could not repeal it. But in the later case the Court held the statute unconstitutional and, as such, not available to Boyd as a defense. The Supreme Court of the United States held that the earlier decisions of the State Supreme Court were not conclusive as to the constitutionality of the statute, since this question had not been raised or considered in these cases; and thus, although the earlier decisions had proceeded upon the theory that the statute constituted a valid contract, the later decision of the State Court, which held the reverse of this, was accepted by this Court as a correct exposition of the law, and this notwithstanding the fact that the plaintiff in error had relied upon the prior decisions as establishing the existence of a valid contract between him and the State.

In *Louisville & N. R. Co.* v. *Palmes*, 109 U. S. 244, this Court refused to follow a decision of the Supreme Court of Florida, which recognized and upheld the right of the Pensacola and Louisville Railroad Company to exemption from taxation, under an act of the legislature of Florida of February 4th, 1872, by which the State attempted to grant to the railroad exemption from taxation. According to the decision of the Florida Court (*Gonzales* v. *Sullivan*, 16 Fla. 791), the act of 1872 operated as a grant of the exemption to the above named railroad company; and for that reason it was held that the property of that company was exempt. Here then was a case where the State Court had con-

strued the grant as valid and operative; and on the faith of this decision the plaintiff in error, a successor in interest of the Pensacola and Louisville Company, acquired its title to the property of that Company. The Florida Court had held the grant of the exemption to the Pensacola and Louisville Company valid, and had also held that the exemption was annexed to the road itself and passed with it to a transferee. But when the case came before this Court it refused to follow the Florida decision, although recognizing that the decision was such that the plaintiff in error may have relied upon it when it purchased the property in question. This Court held that the Florida decision was not authoritative as to the validity of the grant of the exemption by the act of 1872, because the Court had not noticed or considered the question whether the constitution of Florida permitted such a grant. This question was treated as still open for consideration, although it was a question which the Florida Court *might* have passed upon had its attention been directed to it.

In *Keokuk & W. R. Co.* v. *County Court of Scotland County*, 41 Fed. 305, the Court announces the rule to be that a decision of the Supreme Court of a State cannot establish a rule of property, within the scope of the principle in the *Gelpcke case*, as to any question which was not raised or considered by the Court which rendered the decision. The Court said (p. 316):

" In the present case, however, it is clear that the

" decisions relied upon did not establish a settled rule " of property within the meaning of the doctrine in- " voked. In the case of *Scotland Co.* v. *Railroad Co.*, " *supra*, the Supreme Court of the State evidently did " not consider the question whether an exemption from " taxation passed to the consolidated company, because " it was not a controverted question in that Court. " The fact that the exemption was acquired by the con- " solidated company seems to have been taken for " granted * * * It is obvious that no questions " were considered in the *Secor* case except such as had " previously been considered by the Supreme Court of " the State.

" Under the circumstances it cannot be admitted that " the decisions in question established a settled rule of " property to which this Court, any more than the " State Court, is bound to adhere."

See also

Council of Anderson v. *Fowler*, 25 S. E. Rep. 900; *State* v. *Pugh*, 1 N. E. Rep. 439, 453.

In *Quaker City Bank* v. *Nolan County*, 59 Fed. 660, it was held that a decision of a State Supreme Court sustaining a statute which validates certain county bonds, and holding these bonds to be valid, is not controlling on a Federal Court, when it appears that the bonds were void for failure to comply with a provision of the State constitution, and therefore could not be validated by any statute, but that this point was not called to the attention of the State Court and its decision was

based on other grounds.

Applying the rule established by the foregoing authorities to the case at bar, it clearly appears that the decision in the *DeLappe case* cannot be regarded as having established the validity of a notice such as that which was involved both in that case and in the case at bar, and also in the *Central case*. The defect in question is the omission from the published notice of the names of the petitioners. In the *DeLappe case* this omission escaped the Court's attention. It is clear that the Court did not mean to adopt the view that the statute sanctioned a notice of this kind. And so when the point came up in the *Central case*, there was no question of overturning anything established by the *DeLappe case*. The Court simply construed the statute as to a matter concerning which the earlier case had left it unconstrued. This is the view taken by the Court which decided the *Central case*, and we submit that it is sound and correct; and further that the decision in the *Central case*, concerning the sufficiency of a notice such as that there under discussion, is correct and is fully sustained by the authorities cited. This being so, it ought to be followed by this Court; for here there is presented, not a case of an earlier decision which this Court regards as inherently sound, supplanted by a decision of which it disapproves as incorrect, as was the situation in the *Gelpcke case*, but, on the contrary, we have here a case of a later decision inherently right, dealing for the first time with a question,

which in the earlier decision, had been completely overlooked.

In this connection we call attention to the opinion in *Burgess* v. *Seligman*, 107 U. S. 20. On page 33 the following statement is found: "So when contracts and "transactions have been entered into, and rights "have accrued thereon under a particular state of the "decisions, or where there has been no decision, of the "State tribunals, the Federal Courts properly claim the "right to adopt their own interpretation of the "law applicable to the case, although a different inter-"pretation may be adopted by the State Courts after "such rights have accrued. But *even in such cases*, for "the sake of harmony and to avoid confusion, the Fed-"eral Courts will lean towards an agreement of views "with the State Courts if the question seems to them "balanced with doubt."

A fortiori, if the later decision of the State Court appears to this Court to be sound, it should be followed by this Court.

V.

THE ALLEGED FACT THAT THE TULARE IRRIGATION DISTRICT WAS A *de facto* CORPORATION CANNOT PRECLUDE THE LAND OWNERS FROM SETTING UP THE INVALIDITY OR THE ORGANIZATION PROCEEDING AS A DEFENSE TO AN ACTION FOR THE COLLECTION OF AMOUNTS ALLEGED TO BE DUE UPON THE PURPORTED BONDS OF THE DISTRICT.

THE LAND OWNERS, NEVER HAVING HAD THEIR DAY IN COURT, HAVE THEIR CONSTITUTIONAL RIGHT TO OBJECT TO THE CREATION OF ASSESSMENT LIENS OR OTHER INCUMBRANCES UPON THEIR LAND, BY SHOWING THAT THEY WERE NEVER AFFORDED AN OPPORTUNITY TO BE HEARD UPON THE QUESTION WHETHER OR NOT THEIR LANDS WOULD BE BENEFITED BY BEING INCLUDED WITHIN THE PROPOSED DISTRICT.

We do not, of course, dispute the general rule that the existence of a corporation, *bona fide* claiming to exist, can not be collaterally attacked; that for any irrregularity in its organization, the State only can interfere. As was said in *Shapleigh* v. *San Angelo*, 167 U. S. 646, a case cited in *Herring* v. *Modesto Irrigation District*, 95 Fed. 720, the doctrine applies to an *irregularly* organized corporation, which was obtained by compliance with a general law, an organization valid against everybody except the State acting by direct proceeding. The reason is given: "Such an organization is merely voidable, &c."

But we submit that the doctrine has and can have no sort of application to a case like this. So far as the

mere fact of corporate existence is concerned, it may be said that no one but the corporation and the State are interested. And so far as the defect set up consists only of an *irregularity*, it may be said the organization is only voidable and not void. So it is often said that a judgment cannot be collaterally attacked for mere irregularities—that it is voidable, not void. But was that ever thought to extend to even a solemn judgment *void*, as for want of jurisdiction? To such a case the rule in the *Shapleigh case* does not apply; but rather the doctrine there recognized that where even "a municipal " corporation is wholly void *ab initio*, as being created " without warrant of law, it could create no debts and " incur no liabilities" (167 U. S. p. 655). If this district was organized without compliance with the substantial conditions precedent prescribed by the statute, the organization was void *ab initio* and not merely voidable. This is the direct and necessary result of the decision in the *Central case*, reported in 117 Cal. 382. Otherwise, any set of usurpers, without pretending to give any sort of notice, might successfully organize an irrigation district, and before the State could intervene bankrupt the whole community they saw fit to include.

The objection to the application of the doctrine of collateral attack lies even deeper, and we submit, the fallacy in applying it arises from a failure to distinguish between cases where the irregularity consists only in a failure to do something which concerns only the organization of the corporation, and cases like this,

where it happens that the neglected step or act is also and at the same time, a prerequisite to the contracting of the liability sued on or the creation of the burden sought to be enforced. There may be cases where the legislature has seen fit to prescribe certain prerequisites to the formation of a corporation, which, however, it was not compelled to prescribe. In this case the legislature might have authorized the creation of an irrigation district without any previous notice. The corporation would have existed, but it would have been a very different corporation, and before it could impose the burdens here claimed to exist, there would have been necessary a further act of legislation providing for the very notice which our statute prescribed in the first instance. The distinction is well understood. In *N. Y. Cable Co.* v. *Mayor*, 104 N. Y. p. 43, the Court say, in answer to a claim that it had overlooked the point and authorities that the State alone could interpose, etc., that it did not deem it necessary to comment upon those authorities, "for the simple reason that it did not " deem them applicable to the case at bar. In order to " sustain proceedings by which a body claims to be a " corporation, and as such empowered to exercise the " right of eminent domain, and under that right " to take the property of a citizen, it is not " sufficient that it be a corporation *de facto*. " It must be a corporation *de jure*. Where it " is sought to take the property of an individual under " the powers granted by an act of the legislature to a

" corporation to be formed in a particular manner " therein directed, the constitutional protection of the " right of private property requires that the powers " granted by the legislature be strictly pursued, and " all the prescribed conditions be performed." This certainly seems a sensible and reasonable doctrine and distinction, and even to justify the statement of the Court of Appeals of New York that it was so much so that they did not feel called upon to elaborate it in their first opinion. It applies *a fortiori* here. While it is true that in every case where rights of private property are affected, all the steps required by the statute must be taken, it is especially and uncontrollably true when such steps are necessary *constitutional* prerequisites—steps which were not only required by the legislature to be taken, but which the legislature itself could not have dispensed with. The constitution looks at things, not names—at substance, not form. When it prohibits a thing, it prohibits every subterfuge or evasion, by which the thing, which cannot be directly done, is indirectly accomplished. Here the substantial thing is an assessment for benefits. The organization of the district is mere machinery to that end. The *constitution* requires that the fact that the property is benefited shall be ascertained after a hearing and upon notice. It *happens* that the statute blends the requirement of notice of the formation of the district or the organization of the corporation, which it might perhaps have dispensed with, with the requirement of notice of the

hearing on the question of benefits, without which the whole statute would have been unconstitutional and void. Can it be that in this way, by a mere fiction of corporate existence *de facto* or otherwise, the constitutional right to the notice and hearing can be gotten rid of and denied? Suppose this statute had not provided for the creation of any corporation at all, as perhaps, if the question were an open one, should be its construction. Suppose it had simply provided for the assessment by certain county officials, and had provided a similar hearing and notice on the question of benefits, would anyone contend that the assessment or a warrant or even bond issued on it, would stand, if the notice had not been given?

The case of *Reclamation District No. 537* v. *Burger*, 122 Cal. 442, is in point here. That was a suit by a reclamation district to collect an assessment, and the point was made that since the district was a corporation *de facto*, it was not permissible for the land owners to raise any question as to defects in the organization of the district. The defect alleged by the defendant was that the petition for the organization of the district was not signed by the owners of one-half of the acreage of the district, as the law requires. The Court took the position that the requirements of the law concerning the method of forming these districts cannot be evaded by the device of calling the district a corporation. It says, p. 443:

"The proceeding results in putting a burden upon

" property against the will of the owners, and the re-
" quirements as to proceedings of that character cannot
" be evaded by calling the governmental agency
" through which the proceeding is conducted a corpora-
" tion. As remarked in *People* v. *Reclamation Dist.*
" *551*, 117 Cal. 114, the proceeding greatly resembles
" those in which property is assessed for local improve-
" ments in proportion to benefits, and I see no reason
" why the same rules as to essential requirements
" should not apply. The Board of Supervisors is re-
" quired to inquire and determine whether the petition
" is sufficiently signed. So far as this depends upon
" a fact to be determined, their conclusion may be final
" as an adjudication, but the question is not whether
" the district has so acted as to constitute a corporation
" *de facto*. (*Lower Kings River etc. Dist.* v. *Phillips*,
" 108 Cal. 306.) If, upon due notice and a petition
" sufficient in form, the parties have been afforded an
" opportunity to be heard before a competent tribunal,
" they have had due process according to the law of the
" land, and are concluded. They cannot be deprived
" of their property without such hearing, or opportu-
" nity to be heard, by proof of the existence of a corpo-
" ration *de facto*. There must have been in fact, a sub-
" stantial compliance with the law."

In *Payson* v. *People*, 175 Ill. 297, 51, N. E. Rep. 588, an owner of lands embraced in a drainage district objected to the entry of judgment on a delinquent assessment upon the land, on the ground that he had not been

given the notice which the statute prescribed as a prerequisite to the inclusion of the lands within the district. It was contended that this amounted to a collateral attack upon a *de facto* corporation, and was therefore not allowable; but the Court disposed of the contention as follows:

"All the cases above cited as sustaining appellee's "contention are distinguishable from this case. The "statute required that notice should be given the "plaintiff before a right existed to levy the special "assessment against his land. Only after due notice "to him, as required by the statute, can his land be "brought into the district, and made subject to the "special assessment. To hold that a land owner may "be subject to such an assessment without any notice "given or attempted, and without an appearance, would "be against every principle of justice and right. The "right to levy a tax by which one may be deprived of "his property exists by virtue of the statute alone, "which must be strictly followed. Appellant's denial "of the right to levy this tax is not a denial of the ex-"istence of a *de facto* corporation, but is a denial of the "right to subject his land to the payment of any tax "levied as a special assessment without notice to him, "as the land owner, of the organization of the dis-"trict."

In the case of *Bradley* v. *Fallbrook*, 68 Fed. 948, the case before Judge Ross, was one where bonds had been voted and an assessment levied and Bradley's property

sold for an assssmenet. The suit was to enjoin the execution of a deed. Judge Ross held that the statute was unconstitutional, because, as he construed it, it did not provide for notice and a hearing on the question of the truth and sufficiency of the petition. He held that the fact that bonds have been issued and sold, &c., could not justify him in failing to declare invalid legislation violating those principles of the constitution which protect the private property of every person against forcible taking without due process of law and for any other than a lawful purpose. (68 Fed. p. 966.) He was reversed by the Supreme Court (*Fallbrook, &c.*, v. *Bradley*, 164 U. S. 112), but only because this Court differed with him on the construction of the statute, as providing for due notice and a full hearing. It is perfectly manifest from reading Judge Ross' opinion and that of the Supreme Court, that the question of the immunity of the district from collateral attack, as a *de facto* corporation, had and could have no applicability or bearing. If the Supreme Court had coincided with Judge Ross as to the construction of the Act, they would, as appears from their opinion, inevitably have agreed with him as to the proper judgment to be rendered, irrespective of the *de facto* existence of the corporation.

By a perfect parity of reasoning, if Judge Ross had placed the same construction upon the statute which the Supreme Court gave to it; and had it appeared to him that the notice provided by the statute had in fact

not been given, his conclusion would and must have been the same and would have been affirmed.

Where notice is essential, not only must the statute provide for it, but it must be given. This is illustrated by countless cases. The notice in such case is jurisdictional and fundamental in the highest sense of those terms. There can be no substitute for it, least of all the notional fiction of a *de facto* corporation. To hold otherwise is to say that the mere usurpation of a function is the equivalent of its rightful exercise.

But the very point was made in the Supreme Court and disposed of in accordance with our contention. Mr. Choate (164 U. S. p. 184) evidently in answer to this same contention about collateral attack on a *de facto* corporation, *argued:* "Nor is the contention of the "Supreme Court of California aided by calling the "unique entity, brought into existence by this statute, "under the name of Irrigation District, a public cor-"poration, etc." And again on page 149 and on page 148, he replies to the argument of Justice Harrison in the Madera case. In all this he was simply combating this same idea of juggling the property owner out of his constitutional rights by the device of providing for a corporation, and substituting its *de facto* existence for due process—of confounding the right to create a corporation, with the right to take property without notice, etc.

The Supreme Court, in dealing with this question, thus squarely put before it, did not hold that the *de*

facto existence of the district precluded the objection for want of notice; but sharply and plainly drew the distinction for which we are contending. They said (p 174):

" There is nothing in the essential nature of such a " corporation, *so far as its creation only is concerned*, " which requires notice to or hearing of the parties " included therein before it can be formed * * * " In the act under consideration, however, the estab- " lishment of its boundaries and the purpose for which " the district is created, if it be finally organized " * * * will almost necessarily be followed by and " result in an assessment upon all the lands included " * * * When, as in this case, the determination of " the question of what lands shall be included in the " district is only to be decided after a decision as to " what lands described in the petition will be benefited, " and the decision of that question is submitted to some " tribunal (the Board of Supervisors in this case) the " parties whose lands are thus included in the petition " *are entitled to a hearing upon the question of benefits* " * * * Unless the legislature decide the question " of benefits itself, the land owner has a right to be " heard upon that question before his property can be " taken * * * Such a hearing upon notice is duly " provided for in this act."

(p 167): " The legislature not having itself de- " scribed the district has not decided that any " particular land would or could possibly be benefited

ERRATA (page 213).

The sentence beginning on page 213, on the eighth line from the bottom of the page, should read as follows:

In such cases it is most emphatically not a question between the state and the corporation; but a vital question between the individual whose property is affected or sought to be taken and those claiming the right to take or affect it.

" as described, and therefore it would be necessary *to* " give a hearing at some time to those interested upon " the question of fact whether or not the land of any " owner, which was intended to be included, would be " benefited, etc."

The Court then goes into an elaborate consideration of the question whether the statute did provide for this notice and hearing and concluded that it did, solely by reason of the very provision for a notice in the nature of a summons discussed and held essential in the *Central case* in 117 Cal.

Now, on the supposition that the doctrine of collateral attack on a *de facto* corporation was applicable, all this was idle and futile labor, and useless verbiage. Had the Supreme Court adopted Justice Harrison's views and applied them, it would have been of no consequence whether notice was provided for and given, or not. On the contrary they squarely decided that the distinction is between ordinary cases involving only the question of the creation of a corporation, and exceptional cases like this where the parties are entitled, *as a constitutional right*, to notice and hearing. In such cases it is most emphatically not a question between the individual whose property is affected or sought to be taken and those claiming the right to take or affect it. A constitutional guaranty secured by the constitution of the United States, which the State can in no way, either by action or non-action, impair, and which he can always assert whenever attacked,

collaterally or in any other way. The most solemn judgment of a Court of record, rendered either under a statute not providing for notice, or without the notice, if one is provided for, is a mere nullity, and can be shown to be such collaterally. Surely, the *ex parte* action of a special board like this, can have no higher sanction. In showing, then, that due notice was not given of the presentation of the petition for the organization of the district, we do not within the rule collaterally attack the organization or existence of a *de facto* corporation. We simply show that our land is attempted to be taken without due process of law—without the notice to which the Supreme Court has decided we were entitled as a matter of constitutional right under the constitution of the United States. A judgment for the plaintiff is in effect and reality a judgment enforcing upon our lands a lien, which the Supreme Court says cannot be created without notice, without allowing us to show that no such notice was given. From all the discussion before Judge Ross and in and before the Supreme Court, it appears that the only pretence of notice or hearing on the question whether the land was benefited, was that afforded in and by the section construed in the *Central case* in 117 Cal. If not had then, it could never be had, and the opinion in the *Central case* is a clear and irrefutable demonstration, both on principle and authority, that the notice called for was not given in this case. Evidently, from the opinion of the Supreme Court, if this notice had not been pro-

vided for in the statute, Judge Ross' decision would have been affirmed and the enforcement of the assessment enjoined. Is it possible that a different conclusion could have been reached, if the notice, though provided for, had not in fact been given?

Suppose the statutory notice had been given, and yet when in obedience to it, we appeared, the board had struck out our appearance, and without any hearing had organized the district! We certainly could show that fact (even though it involved a collateral attack upon the organization of the district) within the principle of *Windsor* v. *McVeigh*, 93 U. S. (3 Otto) 274. *A fortiori*, we may show that no notice was given or the legal notice was not given.

By the framework of this statute, as interpreted by this Court, the very organization of this district involves more than the mere creation of a corporation. *Ipso facto*, it is the subjecting of the property included to burdens, which cannot be imposed without notice and hearing. In and of itself and intrinsically it is a decision and determination of the question of benefits; and a final and irrevocable determination. We submit that to say that this can be done without the notice required by the statute is in the very teeth of the decision of this Court in the *Fallbrook case*.

Such a corporation, under *such* a statute, is in the language of some of the cases already cited "wholly void *ab initio*, as being created without warrant of law". We submit with all deference that it is not merely

voidable, but, by all the authorities, is void in the extreme sense of the term. As void as was the proceeding in *Windsor* v. *McVeigh*, and for the same reasons. To hold it other, is to amend our constitutional law, so as to make it say, *not* that property shall not be assessed for benefits without notice and hearing; but that it shall not be so assessed *except* in cases where the assessment is made by means of creating a corporation for that purpose.

The cases where a municipal corporation *de facto* has issued bonds and performed other acts which *if de jure* it is authorized to do, are clearly distinguishable. In such cases no constitutional right of hearing is violated, and the corporation, even if *de jure*, could only assess property for benefits after notice and hearing. Such might be this case if this statute had provided independently for the formation of irrigation districts, and the legislature then had passed another statute empowering them after notice given and hearing had, to determine benefits, assess, &c. But where the whole matter is indistinguishably blended as here, the only answer to the contention of Mr. Choate must be found in the distinction recognized by this Court in the *Fallbrook case*.

VI.

THE DECREE IN THE CONFIRMATION PROCEEDING CANNOT SO OPERATE AS TO PREVENT US FROM SHOWING AS A DEFENSE IN THIS ACTION, THE FATAL DEFECT IN THE PROCEEDING BY WHICH IT WAS ATTEMPTED TO ORGANIZE THE DISTRICT. TO MAKE SUCH A DECREE CONCLUSIVE, UPON SUCH MATTERS, WOULD BE TO DEPRIVE THE LAND OWNERS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

If we are right so far, we submit that it follows that the so-called confirmation decree cannot aid or cure the fatal defect in these proceedings; or, in anyway estop or prevent us from setting it up in defense, collaterally or otherwise.

At the time of the institution of the confirmation proceedings, there existed a claim on the part of those pretending to be the officials of the alleged district, that our property had been lawfully subjected to their jurisdiction and that it had been duly and legally and by due process of law declared to be *benefited.* This claim when controverted, constituted and became a question of law and of fact, as to which neither party could be concluded except by the judgment of a court of competent jurisdiction, *proceeding*, in the language of Justice Field in *Windsor* v. *McVeigh*, "*after acquir-*" *ing jurisdiction*, according to the established modes " governing the class to which the case belongs."

See also *Western Union* v. *Mygatt*, 98 Fed. pp. 354 and 355.

At that time matters had passed the stage of *legislative* action looking to the determination in advance of the question of benefit, which Justice Peckham said in the *Fallbrook case*, the legislature, by *legislative* act could either determine itself, or which it could delegate to the Board of Supervisors. And so as to the question of notice, that remained and was *purely* a judicial question, which could not, on the principles laid down in *Western Union* v. *Mygatt* and other cases, be precluded by any legislative action. The principles governing the exercise of the taxing powers, and the assessment of property for benefits and the like no longer applied; and so far as the question of notice and kindred questions were concerned, the matter, as between the land owners and all asserting rights against or over their property, by virtue of proceedings already taken under the statute, stood just as any controverted question or dispute stands between parties to ordinary controversies, or who set up conflicting or opposing rights to property. With this question of notice and benefits, the legislature could deal only subject to the same constitutional restrictions and according to the same principles, that it could deal with a question between any two private parties or individuals and requiring for its determination the solution of controverted questions of law and fact. For example, the question whether the liability of an endorser of a note had been fixed by notice of non-payment and demand; or the question whether the stockholders of a mining corporation could

contest the validity of a mortgage executed without their assent as required by law. What would be thought of a statute authorizing the directors of such a company to publish a notice in a newspaper that on a certain day they would ask the Superior Court to enter a decree to be binding on all the world, declaring such a mortgage valid, and making such a decree a finality? Or of a statute providing for just such a procedure as this to determine, as against all creditors, the validity of liens alleged to have been fraudulently created by corporations or individuals? Could the legislature, after having provided a constitutional procedure for the exercise of the right of eminent domain, of course including notice and hearing, provide, after the fact, for such an omnibus and compendious method of finally adjudicating all judicial questions which had arisen? If some corporation claims to have acquired a right to take my land, where is the warrant or necessity for such unprecedented, harsh and rigorous method of settling any dispute between us as to the compliance with the law? And so in any and every case of disputed questions as to the validity of titles or liens to property, no matter how numerous the claimants, is there any valid precedent for an attempt to allow a Court to decree and adjudge without making all to be affected parties to the suit?

In the *Fallbrook case* Mr. Choate argued: "The "audacious claim is made on the part of the upholders "of the system that the mere right of being heard

" each on the *value of his own land*, without more and " without any right to be heard on the total cost of the " proportional burden which he is to bear, or the " benefit which he is to receive, is sufficient to uphold " the act.

"In answer to this objection, or rather in answer to " the more limited objection that the act makes no " provision for a hearing to be granted to the owners " of the land prior to the organization of the district, " it is claimed by Mr. Justice Harrison, in his opinion " in the *Madera case* (92 Cal. 323), that the proceeding " up to that point is merely for the creation of a public " corporation, which is to be invested with certain " political duties which it is to exercise in behalf of the " state. He claims that it has never been held that the " inhabitants of a district are entitled to notice and " hearing upon a proposition to submit such a question " to a popular vote; that it would be competent for the " legislature to enact it without such a submission; and " that it has as much power to create the district in " accordance with the will of a majority of the electors.

"We care not by what name the legal entity created " by the act may be called, whether a public or a quasi " or semi-quasi, or, as it has been called by one learned " Judge, a bastard public-private corporation, but we do " deny most emphatically that the function with which " it is invested, the duties which it is to discharge, are " in any manner political duties to be exercised in be- " half of the state.

"It is nothing more or less than a service to be ren-
" dered to the land-owners of the district for their own
" account without any intervention or interest of the
" public. It is for these land-owners that the directors
" are to procure and furnish the water for use or for
" sale. It is for them and at their expense that they
" are to issue the bonds. It is for them that the direc-
" tors are to mortgage the property acquired and to con-
" stitute the plant of irrigation works. There is nothing
" public about it; and if there is any force in the points
" we have already presented, there is no force in this
" contention of that learned Judge.

"But he further claims, in respect to the same limited
" objection, that the proceeding for the organization of
" the district *does not affect the property of any one*
" *within the district*, and that no one is by virtue
" thereof deprived of any property. Such result, he
" continues, does not arise until after delinquency on
" his part in the payment of an assessment that may
" be levied upon his property, before which time he has
" opportunity to be heard as to the correctness of the
" valuation which is placed upon his property and is
" made a basis of his assessment.

"Mr. Justice Harrison's statement concludes with the
" hackneyed phrase that the land-owner's property is
" not taken from him without due process of law if he
" is allowed 'a hearing at any time before the lien of
" the assessment thereon becomes final'.

"That is undoubtedly an excellent statement of the

" law, as it has been used by this Court and other courts " in reference to a hearing on the actual merits of the " assessment.

"But as has been well observed by Ross, C. J., in his " opinion in the *Fallbrook case*, the hearing at any time " before the lien of the assessment becomes final must " be a hearing on the *substantial merits* of the question " involved, and not a mere formality or a mere question " of valuation. It cannot fairly be said that the pro- " ceeding for the *formation* of the district from the " filing of the petition to the recording of the vote of " the first election, and the declaration that a district is " organized, do not affect the property of the land- " owners within the district. It is true that that is not " the final step by which they are deprived of their " property, but it is a step which is irrevocable when " taken, and which leads necessarily to the infliction of " the assessment, subject only to the majority vote of " the electors of the district on the question of bonds. " For the directors have no discretion after the organ- " ization is complete, but must immediately proceed " with their estimate, must call the election to determine " whether bonds to the amount of the estimate shall " issue, and once bonds are voted, must use the pro- " ceeds of such bonds in the construction of the system " of irrigation works adopted, must levy and collect an " annual assessment to pay the interest and finally the " principle of the bonds. If the amount of the bonds " voted proves insufficient to complete the works, and

" additional bonds be not voted, they must raise a suffi-
" cient amount to complete the works by the levy of
" direct assessments.

" It is the necessary effect of the act that all these
" things shall proceed as a direct consequence of a com-
" pletion of the organization of the district. It is the
" organization of the district which brings into exist-
" ence the power to entail all these burdens upon the
" property within it. Until the organization no such
" power exists. Once organized, it moves irresistibly
" against any effort of the individual land owner to
" stay its course. The mere existence of the district is
" thus a cloud upon the title of the land-holders and
" inevitably charges them with the cost of whatever
" debt may be incurred whether the bonds are already
" issued or not. So it is not sound reasoning to claim,
" as Mr. Justice Harrison does, that the landholder's
" property is not affected by the organization of the
" district.

" The Supreme Court of California has very recently
" said:

" 'The petition is the initial and jurisdictional point;
" 'and when that has been passed, landowner's as such
" 'have no more power in the premises. *Fallbrook Dist.*
" 'v. *Abila*, 106 Cal. 355, 364 (March, 1895).'"

Mr. Maxwell argued that by the decisions of the Supreme Court of California, no landowner could in any judicial proceeding attack the organization of an irriga-

tion district even though it be void; and that therefore the land owner is deprived of a hearing in violation of the federal constitution. As we have already pointed out, it is evident from the opinion of this Court delivered through Justice Peckham, that the Court affirmed the contention of Messrs. Choate and Maxwell, with the exception that it was held that there was notice and hearing, and therein necessarily and impliedly held that the decisions of the State Court invoked by Mr. Maxwell were unsound; and that, therefore, his conclusion that due process was denied did not follow. They also held that the determination of the question whether the lands were benefited was a *legislative* one, in so far as that the legislature itself might pass upon it, or might delegate its determination to a legislative or administrative body designated by it for that purpose. And while it was held that such body must proceed after notice and upon hearing, it was not held that such hearing must be in the ordinary course of judicial procedure, before the ordinary courts of justice. In other words, as to these preliminary, legislative proceedings, due process of law does not necessarily involve all the forms attendant upon the ordinary administration of justice in the courts. These or some of them may be dispensed with by the legislature; but the notice itself being a constitutional right cannot be dispensed with. And whether the notice has or has not been given, is strictly a judicial question. Thus in the case from 98 Fed., *supra*, it was held that the

attempt to create the Court of visitation was repugnant to the *federal* constitution. The legislature may authorize a board to fix freights and fares; but it cannot authorize the same board to sit as a Court of Justice and finally determine the judicial questions arising upon an asserted procedure under the statute.

So the legislature could not empower the Board of Supervisors conclusively to determine the question whether due notice had been given, though if such notice was given, it might make their decision on the question whether the lands were benefited conclusive, and for the same reason and upon the same principle that the legislature cannot make the decisions of a board like a Railroad Commission, conclude the judicial question of the reasonableness of the rates fixed by them. Evidently also, and this bears upon what was decided and said in the *Tregea case*, this Court in the *Fallbrook case* (164 U. S. 175) clearly traced the boundary between what the legislature may and may not make conclusive evidence or determination, to wit, so far as the mere creation of a corporation is concerned, it may prescribe at will what shall be conclusive evidence of its due organization; but, practically adopting that part of Mr. Choate's argument, that in a case like this, it cannot so conclude the question of benefits or any other constitutional and therefore judicial question. There is a wide and manifest difference between the question of benefit and the question of notice. One is legislative and the other judicial. And while the

kind of notice of the hearing on the question of benefit may be such as was here prescribed, the kind of notice requisite for a determination of the judicial question whether notice was given, is that customary and required in ordinary judicial proceedings *inter partes*.

Thus no one would contend now-a-days that the legislature can pass a statute making a tax deed conclusive evidence of matters vitally essential to the exercise of the taxing power. Such a statute would be simply void.

25 Am. & Eng. Ency., p. 698;
Marx v. *Hanthorn*, 148 U. S. 172;
Ramish v. *Hartwell*, 126 Cal. 443.

See also *Lufkin* v. *Galveston*, 73 Tex. 340, where it is said: "The constitution limits the power of the legislature to declare the conclusive effect of a tax deed. "As to these facts which must exist in order to call "into exercise the power of the officer to make the "sale—the facts essential to give him jurisdiction over "the property—*an inquiry into the courts of the country "cannot be precluded.*"

Now, then, after the formation of a district, even if it be formed without giving any notice, the very idea of its existence at all, even *de facto*, presupposes the segregation of a definite tract of land, and the ascertainment of a fixed body of land owners who are to bear the burdens to be imposed. In such case there is and can be no necessity for dispensing with the usual and approved methods of litigating any disputed judi-

cial questions which may arise, or for devising any novel or dangerous substitutes for the ordinary process to bring all necessary parties into Court.

The contention, as we understand it, is that this confirmation decree binds all the landowners and estops them from setting up any defense growing out of matters anterior to the decree. If we are right on the point of collateral attack on the existence of the corporation, then at the time of the inception of the confirmation proceedings, unless the decision in the *Central case* (117 Cal.) is to be overruled or disregarded, as to the landowners there was no corporation at all. At any rate there was no corporation which had any legal right to bind the landowners or the land, or to affect it in any way. There was no determination that the land was benefited, and the ownership and title of and to the land remained utterly unaffected by any of the proceedings attempted. The so-called corporation had no vestige of right or authority to bind the landowners or the land in any way, either in Court or in pais; and no right to appear for or represent or bind them in any Court or in any proceeding. If the judgment in the confirmation suit does not bind the land or the landowners, then there is nothing to bind them or it, or to justify any judgment in the present action affecting them or it. Even if the Circuit Court had jurisdiction to enter an ordinary judgment against the corporation only, instead of taking jurisdiction only, as it were, as ancillary to and the foundation of a mandamus, it

should not do so if it appears, as we contend, that such judgment would be a mere form or futility, by reason of a perfect defense to the mandamus. The only result would be to postpone the decision of a vital question till the mandamus is tried. And if such judgment would be conclusive in the mandamus, then, of course, the defense, if valid, must now prevail.

Now, previous to the *Tregea case*, 164 U. S. 179, the Supreme Court of California had held that these confirmation proceedings were proceedings *in rem*, and that the decree concluded *the whole world* upon all the questions involved, including, we take it, this question of notice.

People v. *Linda Vista*, 128 Cal. 477.

But in the *Tregea case* the Supreme Court of the United States totally dissented from this view. Such is evidently the view taken of the *Tregea case* by the Supreme Court of California in the *Linda Vista case*. They say, "The construction given the Act by the "highest Court in the land is one new to this Court", and that such construction, that is, that it was only to secure evidence, is contrary to the intention of our legislature. And further, that as construed by the Supreme Court of the United States, the statute admits of grave doubts as to its constitutionality, whether the decree be held *conclusive*, or only *prima facie* evidence.

So far, we submit, the California Court is obviously right, but, we also submit that they are obviously wrong when they undertake to say that they had a

right to disregard the decision in the *Tregea case*, on the ground that it was their right and duty to construe the statutes of California according to their own light; and it was immaterial whether the Federal Courts should follow the State Court in this matter. In the *Tregea case* it was unanimously held that the case presented a federal question. The case presents the question whether this confirmation act, construed as the Supreme Court of California construed it, deprived the parties of property without due process of law. There were two ways to dispose of it. One, that suggested by the dissenting justices, to follow the construction of the California Court; and thereupon to hold either that, so construed, the statute was or was not in violation of the federal constitution. The other, that adopted, was to dissent from the construction of the California Court, and to hold that the statute did not provide for a judicial proceeding *in rem*, or for any binding judicial determination; but was simply an exercise of *legislative* power—a mere proceeding to obtain evidence. Like statutes, making it the duty of an auditor, or other ministerial officer, to examine and certify proceedings—a proceeding by the State to secure evidence "of the regularity of the proceedings of its municipal corporations". Now, upon what possible line of reasoning can it be said that the construction of the statute thus given to it by the Supreme Court of the United States is any less binding than its construction would have been if it had construed it in any other

way, or had reversed the judgment instead of dismissing the case?

A federal question being involved, this Court felt compelled to and did construe the statute, and such construction *must* be followed by all other Courts. If this Court had not so believed; if it had given any heed to the suggestion that it must follow the State Court, the decision would have been different.

The decision, then, amounts to a decision that the State Court must follow, and not the Federal Courts. More, it is really a *decision* that the confirmation decree is not binding or conclusive on the landowners or the land, if on anyone. Because, if this Court had held that the landowners or the land were bound conclusively by the decree, it could not have dismissed the writ of error. How could it? If the proceeding was a judicial proceeding *in rem* binding on all the world, and if a federal question was presented, the Court was bound to decide that question, and could not dismiss the case.

The majority evidently held that the proceeding was not judicial at all, but rather executive (164 U. S., p. 189); that whatever its form, it was a mere *ex parte* case; that (p. 188) as it could not bind the bondholder, so for lack of mutuality it cannot bind the landowner; that it is doubtful if it really binds anybody. (P. 187.)

Now, then, is it conceivable that the same Court, which had just decided in the *Fallbrook case* that the landowners had a constitutional right to notice and

hearing, decided in the next breath in the *Tregea case* that they could be concluded by "a mere *ex parte* case" on the vital question whether they had been deprived of such constitutional right?

The expression in the majority opinion, that the Court was not concerned with the State measures to secure evidence of the regularity of the proceedings of its municipal corporations, and that it may authorize an auditor or other official to give a conclusive certificate of regularity, must be interpreted in the light of the opinion in the *Fallbrook case*; and so interpreted, it is easy to harmonize both cases without making one contradict the other, as must be if we interpret the *Tregea case* as holding that the State, which cannot deny notice and hearing on the question of benefit, can deprive the party of it by the simple device of authorizing a ministerial or executive offieer to supply the want of it by an *ex parte* certificate falsely stating that it was given. As well might you say that a statute might be passed authorizing a notary public to make a conclusive certificate of notice to charge an endorser; or that a married woman he never saw had acknowledged a deed; or giving such effect to the certificate of the Justice of the Peace or other officer or board to the effect that in a condemnation proceeding due notice had been given, or compensation adjusted and adjudged or actually paid.

There is no real or substantial difference between holding that the decree or certificate is conclusive as *evidence*, and holding it conclusive as *res adjudicata*, as

did the Supreme Court of California, so far as the constitutional right and question here involved and presented is concerned. Chief Justice Fuller and Justice Field dissented in the *Fallbrook case.* They concurred in the *Tregea case.* Certainly they would not have assented to any opinion which could fairly be construed as holding that this confirmation act could legally make the decree conclusive evidence of notice and benefit. Justice Peckham clearly drew the distinction between the mere creation of municipal corporations and fixing the liability of the land owners, the question of benefit, &c. Did he agree by concurring in the *Tregea case*, that the constitutional right to notice and hearing he had so ably indicated, was such a shadowy and futile thing that it could be wiped out by an *ex parte* certificate; or did he construe the opinion in the *Tregea case* as simply carrying out the same distinction that the statute might provide for conclusive evidence of such things as required no notice and hearing, such as the organization of corporations as such, and the regularity of their proceedings so far as no constitutional rights were involved?

The minority Justices in the *Tregea case* held that the confirmation decree would be conclusive and therefore the case must be determined on its merits. The majority must have dissented from the proposition that the decree would have been conclusive or they would have assented to the corollary. They certainly could not have thought it material that it could only be conclus-

ive as evidence. In no other way could such a judgment ever be conclusive. It might as well be said that a judgment quieting title rendered without due notice would not be reversed, or a judgment establishing marriage or heirship and the like.

What did the California Supreme Court mean in the *Linda Vista case*, by saying that in the *Tregea case*, " much is said tending to weaken the force and vitality " of the confirmation act as an act providing for judicial " procedure and judgment", and that it is badly *maimed* by the decision in the *Tregea case*?

If the decree is still conclusive on all points, how is the force and vitality of the act weakened or how is the act maimed? The answer is plain, and shows that the California Court has correctly understood the force and effect of the Tregea decision, and only erred in refusing to follow it. It weakens the act only in so far as it relegates the confirmation to its proper and only legitimate function and gives to the decree its only proper and legitimate effect as an instrument of evidence. Evidence not made conclusive by the terms of the statute and only to be held conclusive by a construction repudiated by the Supreme Court of the United States, and which, by treating the proceedings as judicial and the decree as a judgment, imports conclusiveness as *res adjudicata*.

As evidence merely, the decree can only be *prima facie* unless the statute in terms makes it conclusive. And even if the statute had in terms purported to

make it conclusive evidence, it could be operative, in that respect, only, in so far as the legislature by legislative act, could make evidence conclusive. And that we have seen does not extend to the foreclosing of fundamental, essential and constitutional rights, nor to the failure to comply with requisites, with the compliance with which the legislature could not have dispensed in advance.

But, even if we could follow the construction of the Supreme Court of California, and reject and hold for naught that of the Supreme Court of the United States, in dealing with this very statute, the result must be the same. The statute on that construction is unconstitutional.

The proceeding is in no sense a proceeding *in rem*. It provides for the decision and adjudication of questions of law and fact *inter partes*. And there is no warrant in principle or upon authority for such an attempt to provide a special mode of determining such issues; or for assuming to make a judgment final and binding on any but those made parties to the record, and who have been duly served.

It is not and never was the law, at least in proceedings to adjudicate controverted questions between parties, in which the State has no interest or concern, that service by publication or posting is sufficient to constitute due process of the law.

Known residents must be served personally and according to the course of the common law.

In *Webster* v. *Reid*, 11 How. 437, a case which so far as we can ascertain has never been doubted or qualified, the Supreme Court of the United States decided this question.

There, as here, the legislature undertook to provide, in order to settle the validity of the title to a large tract of land, for service by publication, and for proceedings in which the parties sought to be bound should not be made parties to the suit, except by a general designation as "owners of the half-breed lands, "etc." The Court said: "This was an extraordinary "procedure from its commencement * * * by the act "under which the suits were instituted, no other desig- "nation of the defendants was required than 'owners of "'the half-breed lands lying in Lee county'. These "suits were not a proceeding *in rem* against the land, "but were *in personam* against the owners of it. "Whether they all resided in the Territory or not does "not appear, nor is it a matter of any importance. No "person is required to answer in a suit on whom pro- "cess has not been served, or whose property has not "been attacked. In this case there was no personal "notice, nor an attachment or other proceeding against "the land, until after the judgments. The judgments, "therefore, are nullities." * * * This case is cited with approval in *Pennoyer* v. *Neff*, 95 U. S., p. 728.

See also *U. S.* v. *Burke*, 99 Fed. pp. 899–900.

In *State* v. *Guilbert*, 47 N. E. 556, the Supreme Court of Ohio held a statute unconstitutional on similar grounds. The Court say: "The act does not require "a petition or bill such as is appropriate in suits be- "tween adverse parties, nor does it require or contem- "plate that a summons or equivalent preliminary pro- "cess shall issue from the Court advising those who "claim an interest in the land to be registered that their "alleged interests are to be the subject of adjudication "in the proceeding. Both by the terms of the act and "the form which it prescribes, the only notice required "is to be given by the applicant. In the notice so re- "quired to be given, no one claiming an interest ad- "verse to that of the applicant is to be named, although "the names, places of residence and alleged interests "of all who claim adversely are known." They go on to say that merely *calling* the proceeding one *in rem* does not help it out—that it has no analogy to a proceeding in rem, the *res* not being taken into possession of any officer of the Court—that it differed in no substantial respect from a suit in *quia timet* to settle title. That the judicial force of the proceeding is wholly expended in a conclusive determination of the rights of the persons in the land. All of which, we submit, fully applies here, and we ask the attention of the Court to the able opinion in which these questions are dealt with.

Webster v. *Reid* is cited, also *Brown* v. *Board*, 50 Miss. 468, to which we invite the particular attention

of the Court as directly in point and as a most forcible and convincing demonstration of the correctness of our contention. We challenge counsel to distinguish that case from this, or to successfully combat the reasoning of the opinion.

It is but fair to the Court to call to its attention some other cases which may be claimed and which have been claimed to be contrary to the doctrine of the Ohio case. But, we submit, that on investigation and careful consideration, they will be found, not to weaken it, even if approved by this Court, which we submit they should not, because in so far as they differ from the Ohio and Mississippi cases, they do not commend themselves to the judicial mind. On the contrary, we submit, that as applied to the facts of this case they are authorities rather in favor of our contention than against it.

In *People* v. *Simon*, 52 N. E. Rep. 910, the Supreme Court of Illinois had occasion to consider the Ohio cases above cited, and said (p. 915) " with its conclu-" sion, viz., that the Ohio statute was unconstitutional, " we agree, but what is said in argument cannot be " adopted as applicable to this case." The main ground of the Ohio decision is then stated, as we have quoted it; and, as we take it, approved. So far as the Illinois case is in point and authority it is in our favor, for if the Ohio statute was unconstitutional, then undoubtedly and for every reason, our statute is also unconstitutional. In so far as the Ohio statute differed from

that of Illinois, and in so far, therefore, as parts of the opinion in the Ohio case were not applicable to the Illinois case, the Illinois case is not here in point. On the substantial points our statute is like the Ohio statute.

Even in the respects in which the Illinois case differed from the Ohio case and from ours, it is authority in our favor on other propositions. So far as the Illinois statute was upheld it was as a statute of limitations, but nowhere is the true doctrine on that point better expressed. They say, concerning the provision, that all parties, whether personally served or not, must appear within two years: "This provision seems to "attempt to make a decree binding upon persons *not* "*parties to the suit*, and if given effect literally, would "deprive persons of vested rights without due process "of law. A limitation may be placed upon the time "within which a person *who has a mere right of action* "shall bring it, but 'limitation laws cannot compel a "'resort to legal proceedings by one who is already in "'the complete enjoyment of all he claims.' *Cooley* "*Const. Lim.*, p. 366. To the extent that the act at-"tempts to transfer property without due process of "law it cannot be upheld."

That is to say, our statute cannot be upheld at all, for as construed by the Supreme Court of the State of California it attempts to take, or, which is the same thing, incumber property in possession, and not mere right of action, as against persons not parties to the suit.

The Illinois case also agrees with the Mississippi and Ohio cases as to the necessity of personal service on residents. They say that when a substituted service is permitted, it is *because of the necessities of the case*, and that the Illinois statute *did* provide for personal service in some cases, and for publication in case of unknown residents and of non-residents.

Barnard v. *Anderson*, 44 Minn. 97; 46 N. W. Rep. 315, is a strong case in our favor. It is there held that in a suit to foreclose a mortgage, service of summons by publication in a newspaper upon resident defendants, who are personally within the State, and can be found therein, is not due process of law, and that a statute assuming to provide for such service in actions to foreclose mortgages is unconstitutional and void.

We submit that there is no sufficient precedent and no valid reason for upholding the power of the legislature to provide for proceedings which shall bind or conclude all the world by a decree of the kind rendered in the confirmation proceedings; and that where similar statutes have been upheld even by a divided Court, it has been with reluctance and hesitation, and only because the statutes differed from ours in many respects and particularly in that they did provide for actual personal service on known residents, and only authorized publication where and in so far as *necessity* required and justified it, as in case of non-residents or unknown residents. And further, that the weight of authority and the better reason is that even in such exceptional cases,

no one can be bound who is not made a party to the suit.

The Massachusetts case is *Tyler* v. *Judges*, 55 N. E. 812. That was decided by a divided court and against a powerful, and, we submit, unanswerable dissenting opinion. We ask the Court's particular attention to that opinion and the authorities there cited. It will be noticed that most of or a very great part of what is said in the opinion of Chief Justice Holmes is not only dicta, but avowedly the mere personal view of the writer, not concurred in by a majority of the Court. He says, p. 815: "A majority of the Court prefer to as- " sume that in cases in which, under the constitutional " requirements of due process of law, it heretofore has " been necessary to give to parties interested actual no- " tice of the pending proceeding by personal service or " its equivalent, in order to render a valid judgment " against them, it is not in the power of the legislature, " by changing the form of the proceedings from an ac- " tion *in personam* to a suit *in rem*, to *avoid the necessi-* " *ty of giving such a notice*, and to assume that under " this statute, personal rights in property are so in- " volved and may be so affected, that effectual notice " and an opportunity to be heard, should be given to " *all claimants who are known or who by reasonable ef-* " *fort can be ascertained.*"

And even of a statute complying with those constitutional requirements, as held, he said it was not to be upheld without anxiety. Our statute differs from that

of Massachusetts, among other things, in utterly failing to make any provision for actual notice or its equivalent, even as to *known residents*.

VII.

IF THE STATUTE PROVIDING FOR THE CONFIRMATION ACT WAS DESIGNED TO MAKE THE DECREES IN CONFIRMATION PROCEEDINGS CONCLUSIVE OF THE RIGHTS OF LAND HOLDERS AND BINDING UPON THEM, IT MUST FOLLOW THAT THE PROVISION IS REPUGNANT TO THE PROHIBITION OF THE DENIAL OF THE EQUAL PROTECTION OF THE LAWS, FOUND IN THE XIVth AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

It will be observed that the point or reason in respect whereof the Supreme Court of the United States differs from the Supreme Court of California, in regard to the confirmation act, is here most pertinent. As estoppels must be mutual and as the bondholders could not be bound by the confirmation proceeding, so neither the property owners nor the land can be bound. If you assume with the State Court to treat the confirmation decree as *judicial*, the injustice and futility of any attempt to hold one party to it bound and leave the other free is most glaring. And even if you treat it as *evidence*, it is an unheard of and hitherto unattempted thing for a statute to declare an act or instrument conclusive evidence against some of the parties to be affected and of no avail as against others equally affected. Such a discrimination would constitute class legislation of

the most arbitrary and *indefensible* description.

The prohibition against class or special legislation contained in section 25 of article IV of the Constitution of California, is to all legal intent identical with the provision in the 14th Amendment to the Constitution of the United States against the denial of the equal protection of the law.

So much so, that it can be broadly and confidently asserted that whenever a statute offends against the State prohibition, for the very same reasons and upon the very same principles and tests, it equally falls as repugnant to the 14th Amendment. It follows that no decision of the State Court in so far as that Court holds this confirmation not to be special legislation under the State constitution, is *binding* on this Court, because if this Court holds that it is such special legislation, it must follow its own independent judgment; for the reason that in so differing with the State Court it *ipso facto* determines that the statute violates the 14th Amendment.

In *Krause* v. *Durbrow*, 60 Pac. 438 (127 Cal. 681), it was held that the Legislature could not discriminate between mining and other corporations by allowing the holder of the certificates of mining stock to vote at a corporate election on production of the certificate, while in other corporations only registered shareholders are entitled to vote. In *Johnson* v. *Goodyear Mining Co.*, 59 Pac. 304, (127 Cal. 4) a statute applying to all corporations doing business in the State and regulating

the payment of wages to their employees was held invalid as in conflict both with the State and Federal constitutions. These decisions are in harmony with the trend and current of judicial thought elsewhere, as is shown in the opinions of Justice Harrison and Commissioner Cooper, the latter being a most masterly and exhaustive review of the law on this subject. Every reason given why these statutes conflicted with the State constitution applies with equal force to show that they conflict with the 14th Amendment. To prove this it is only necessary to compare the rules formulated by the Supreme Court of the United States as a test by which to determine what is a deprivation of the right to equal protection of the law, with that formulated by the California Supreme Court as a test to determine what is special legislation. The thought and language will be found to be the same.

Ch. J. Beatty, in City of *Pasadena* v. *Stimson*, 91 Cal. 251, thus expresses it: "The conclusion is, that although "a law is general and constitutional when it applies "equally to all persons embraced in a class founded "upon some natural or intrinsic or constitutional dis- "tinction, it is not general or constitutional if it confers "particular privileges or imposes peculiar liabilities or "burdensome conditions in the exercise of a common "right, upon a class of persons arbitrarily selected from "the general body of those *who stand in precisely the* "*same relation to the subject of the law.*"

This is approved and followed in *Kraus* v. *Durbrow*,

where it is also laid down that while the legislature may classify for the purposes of legislation, the classification must not be arbitrary; and the class must not only be germane to the purpose of the law, but must also be characterized by some substantial qualities or attributes reasonably indicating the necessity or propriety of the discrimination.

Turning to the formulation of the rule under the 14th Amendment, we find in *Gulf &c.* v. *Ellis*, 165 U. S. 152, the following: "Such a classification cannot be " made arbitrarily. * * * That must always rest " upon some difference which bears a reasonable and " just relation to the act in respect to which the classi- " fication is proposed, and can never be made arbitrarily " and without any such basis. * * * It is apparent " that the mere fact of classification is not sufficient to " relieve a statute from the reach of the equality clause " of the 14th Amendment, and that in all cases it must " appear not only that a classification has been made, " but also that it is one based upon some reasonable " ground—some difference which bears a just, a proper " relation to the attempted classification, and it is not a " mere arbitrary selection."

In *Cullen* v. *Glendora Water Co.*, 113 Cal. 514, it was held that the provision in the confirmation act that a motion for a new trial must be made on the minutes of the Court, was special legislation and unconstitutional; and it was said: "The subject of the law in " question is the *mode* of moving for new trials in the

" Superior Courts, to which subject the parties to all " actions and special proceedings stand in precisely the " same relation as do the parties to the small class of " special proceedings, to which, alone, this law is made " applicable, and should equally share the peculiar " privileges conferred or equally suffer the disabilities " and burdens imposed by it; since no discrimination in " the application of the law is justified by any peculiar " characteristic of the object of the law, or of the " parties to the special proceeding to which the law " applied."

We submit that this proposition and every word of the opinion of Commissioner Vanclief in support of it, equally and in all its force applies to other vital and essential provisions of the confirmation act dispensing with the general laws in force governing procedure in judicial proceedings. If the legislature could not provide a special mode of moving for a new trial, then for the same reasons and all the reasons, it could not provide a special mode of service. The land owners here, a small, well-defined and known body of citizens, could not thus be classified and subjected to harsh and novel process to bring them into Court. If in all other cases, the *Code of Civil Procedure* provided a mode of service on unknown or absent owners of land, these owners, if unknown or absent, were entitled to the same procedure. And there is no *conceivable* reason why in such case the usual method of service by publication of summons should not be resorted to. Such of the owners as were

known and residents of the State were for the same reason entitled to personal service of summons, and all were entitled to be made *parties* to any *judicial* procedure by which they were sought to be bound. Even if the bonds had been already issued and sold, so as to obviate some of Justice Brewer's objections, the statute would be void, as denying the equal protection of the law. For then there would have been a controversy in no wise calling for any special or discriminating legislation, any more than a controversy between a mortgagee and a mortgagor and all his privies, would call for or justify such a classification or discrimination. In either case the only parties interested are the mortgagee and all the parties interested in the land. In many cases an asserted and controverted lien or incumbrance may cover a large tract of land in which many subsequent parties may claim an interest which must be foreclosed. For that purpose the usual and regular procedure is ample and all sufficient; and surely the mere size of the tract of land, or the number of subsequent vendees or parties interested cannot furnish a ground of classification or discrimination. The case is only more glaring when the proceeding is taken in advance of the issue of the bonds. For then an additional and palpably unjust discrimination is made, in the hitherto unheard of attempt to authorize the rendition of a decree which shall absolutely bind some of the parties concerned and leave the others absolutely free and unaffected. If the

14th Amendment secures "law in its *regular adminis-* " *tration* through Courts of Justice—a course of legal " proceedings according to those rules and forms which " have been established for the protection of private " rights—a proceeding appropriate to the case and just " to the parties affected."

Alexander v. *Gordon*, 101 Fed. 96.

We ask again why these land owners were not as much entitled to the benefit of usual and established forms of summons and service, as to the usual mode of moving for a new trial? Is the summons by which I am first brought into Court *less* important to me than the rules of practice by which I am to be governed after I appear? Really the State Court to be consistent should have decided that the right to move for a new trial in this class of cases could have been taken away altogether; or that the whole Act was unconstitutional.

Again, if mining corporations cannot be classified as was attempted in *Krause* v. *Durbrow*, how can irrigation districts be classified as here attempted? What peculiarity is there about an irrigation district, which justifies an exceptional method of framing complaints and serving summons? Upon the reasoning of Justice Harrison in *Krause* v. *Durbrow* and of Commissioner Cooper in *Johnson* v. *Goodyear*, we submit, absolutely none. In every conceivable case where assessments for benefits are to be made and bonds issued, there could be advanced precisely the same reasons for discrimination and departure from the usual course of procedure.

Why then single out arbitrarily this particular class of property owners and deny them the usual safeguard of orderly process, accorded to all others in *consimili casu*?

VIII.

THE ALLEGED DECREE OF CONFIRMATION MADE IN 1890 BY THE SUPERIOR COURT OF TULARE COUNTY IS VOID AND THEREFORE NOT AN ESTOPPEL AGAINST EITHER THE DISTRICT OR THE LAND OWNERS THEREIN. THE DECISION IS VOID BECAUSE IT APPEARS ON THE FACE OF THE RECORD IN THE CONFIRMATION PROCEEDING THAT NOTICE OF THE HEARING OF THE PETITION WAS NOT GIVEN IN THE MANNER PRESCRIBED BY THE STATUTE.

No presumption can be indulged in favor of the jurisdiction of a Court of inferior jurisdiction, or of any Court in a special statutory proceeding.

Galpin v. *Page*, 18 Wall. 350.

And, even in the case of a Court of general jurisdiction, acting in the exercise of its ordinary powers, a recital in a judgment that jurisdiction has been acquired is always limited and controlled by the record, when the latter shows the manner in which jurisdiction has been attempted to be acquired. If the mode shown to have been pursued evinces that jurisdiction was not obtained, jurisdiction will not be presumed because of the recital; nor will it be presumed that jurisdiction was acquired in some way different from that appearing of record.

Foster v. *Givens*, 67 Fed. Rep. 684, 691–692;
Dick v. *Foraker*, 155 U. S. 404, 15 Sup. Ct. 128;

Pearson v. *Pearson*, 46 Cal. 636–637;
Galpin v. *Page*, 18 Wall. 350;
Hahn v. *Kelly*, 34 Cal. 391, 407;
Settlemeir v. *Sullivan*, 97 U. S. 444;
Cheeley v. *Clayton*, 110 U. S. 701.

The notice of the filing of the petition for confirmation was posted by Edward Oakford, who claims to have been at the same time secretary of the board of directors of Tulare Irrigation District. (*Record* p. 283).

The Confirmation Act provides in section three (Stats. of Cal. 1889, p. 212) (*supra*, p. 74):

" The Court shall fix the time for the hearing of " said petition and shall order the clerk to give and " publish a notice of the filing of said petition."

The giving and publishing of the notice in the mode prescribed by the statute is, of course, jurisdictional. No other mode, however efficacious, can be sustained.

Macadamizing Co. v. *Williams*, 70 Cal. 541.

The notice required to be given is in the nature of process.

Williams v. *Bergin*, 108 Cal. 166, and cases there cited;
Dupont v. *Comrs.*, 28 Mich. 362;
Boynton v. *People*, 39 N. E. Rep. 622;
Neppach v. *Jordan*, 10 Pac. Rep. 341; s. c. 13 Oregon 246;
Railway Co. v. *Superior Court*, 79 Cal. 103, 104, 105;
Mulligan v. *Smith*, 59 Cal. 206, 243, per McKinstry, J.;

Scammon v. *Chicago*, 40 Ill. 146, 147–149.

The giving of notice is an official act.

Assessors v. *Clifton*, 33 Me. 369.

In the case of constructive service the notice or process which is essential to acquire jurisdiction either of the subject matter or of the person, can be given or served only in the manner and by the person or persons prescribed by the statute creating the jurisdiction.

Those persons only give or serve or publish the notice or process who have the peculiar qualifications, and who are appointed in the manner prescribed by the statute, since the giving or serving or process whereby a party may be affected in his person or property is entirely dependent for its efficacy upon the statute authorizing it (*Minard* v. *Douglass Co.*, 7 Or. 209, 210). Service or publication by any one else is absolutely void.

McMillan v. *Reynolds*, 11 Cal. 372;
Doerfler v. *Smidt*, 64 Cal. 264;
Lyons v. *Cunningham*, 66 Cal. 42;
Barney v. *Vigouneaux*, 75 Cal. 376;
Horton v. *Callardo*, 88 Cal. 581;
Williamson v. *C. R. D. Co.*, 95 Cal. 652;
Pinckard v. *Davis*, 35 S. W. Rep. 921;
U. M. F. I. Co. v. *Page*, 61 Mich. 72; s. c. 27 N. W. Rep. 859;
Davis v. *Hamilton*, 53 Ill. App. 94;
Gadsby v. *Stimer*, 44 N. W. Rep. 606;
Prickett v. *Cleck*, 11 Pac. Rep. 49;
Hammil v. *Ferrier*, 45 Pac. Rep. 522;
Kincaid v. *Frog*, 31 Pac. Rep. 704; s. c. 13 Or. 415;

Mitchell v. *Shaw*, 53 Mo. App. 652;
William v. *Hutchinson*, 7 So. R. 852; s. c. 26 Fla. 513;
Dolan v. *Topping*, 32 Pac. Rep. 1120;
Lazzarone v. *Oishei*, 21 N. Y. Supp. Rep. 267;
Douthit v. *Martin*, 39 S. W. Rep. 944.

The question whether or not the parties intended to be affected by constructive notice obtain actual notice, where the service prescribed must be purely constructive, is immaterial.

Williams v. *Bergin*, 108 Cal. 166, *supra*;
O'Hare v. *Town of Park River*, 47 N. W. Rep. 380;
Bitting v. *Douglass Co.*, 33 Pac. Rep. 981;
Fox v. *Middlesborough*, 28 S. W. Rep. 776;
Lusk v. *Perkins*, 2 S. W. Rep. 847;
Verona v. *Alleghany, etc. R. Co.*, 25 Atl. Rep. 518;
Osborne v. *Columbia, etc. Corpn.*, 38 Pac. Rep. 160.

It is manifest from the authorities cited, from the specific provisions of section three of the Confirmation Act, and because the giving of notice is an official act, that the posting of notices by Edward Oakford was a futile and void act.

The Clerk of the Court alone was charged officially with the duty of giving and publishing the notice of the filing of the petition for confirmation, and he could not delegate his power in that regard to a private individual. For it does not appear that Oakford was deputized by the Clerk to act in his behalf, as a deputy, in posting the notices. *Delegatus non potest delegare* applies as

well to public officers as to private individuals.

"Deputy"—*5 Am. & Eng. Ency. of Law*, 623 and notes;
City of Oakland v. *Carpentier*, 13 Cal. 540;
Sayre v. *Nichols*, 7 Cal. 535, 542;
People v. *Town of Linden*, 107 Cal. 94, 100.

Since, therefore, Oakford was neither a deputy of the clerk, nor acting under the sanction of an official oath, he was acting in a merely private capacity. His acts were, therefore, absolutely nugatory.

This appears on the face of the record and shows, therefore, a want of jurisdiction in the Court to pronounce the judgment which it caused to be entered in the confirmation case.

IX.

ASSUMING THAT THE RECORD SHOWS THAT THE COURT HAD JURISDICTION IN THE CONFIRMATION PROCEEDINGS, THEN THE SECOND JUDGMENT OR DECREE, MADE BY JUDGE GRAY, AND ENTERED NOVEMBER 23rd, 1898 (*Record* p. 410), IS THE ONLY JUDGMENT OR DECREE IN FORCE.

For when in an action two judgments appear the later in point of time must prevail in the absence of some showing invalidating the second one.

Paige v. *Roeding*, 96 Cal. 388, 391;
Colton L. & W. Co. v. *Schwartz*. 99 Cal. 278, 281–283;
Von Schmidt v. *Von Schmidt*, 104 Cal. 547, 549–550;
Cf. Freeman v. *Spencer*, 60 Pac. Rep. 979, 980–981.

Since on a direct attack upon the second judgment on appeal therefrom, the presumption of its validity would prevail unless it were impeached by the record; *a fortiori* must its validity be sustained on a collateral attack.

Galvin v. *Palmer*, 66 Pac. Rep. (Cal.) 572.

X.

THE TWO YEARS' STATUTE OF LIMITATIONS PRESCRIBED BY SECTION THREE OF THE WRIGHT LAW, AS AMENDED IN 1891 (STATS. 1891, p. 144), DOES NOT PRECLUDE AN ATTACK UPON THE VALIDITY OF THE DEFENDANT DISTRICT.

The Bridgford bill (Stats. 1897, pp. 254–287) is a complete revision of and substitute for the Wright Law, with its amendments; and upon well known rules of statutory construction the bill was an absolute repeal of the law.

Dillon v. *Bicknell*, 116 Cal. 111, 114;
Pana v. *Bowler*, 107 U. S. 529;
Cook County Nat. Bk. v. *United States*, 107 U. S. 445;
District of Columbia v. *Hutton*, 143 U. S. 18.

The Bridgford bill contains no statute of limitations preventing an attack on the validity of the organization of irrigation districts.

Moreover, the Bridgford bill contains ample provision repealing the Wright Law and its amendments. Section 110 of the bill (Stats. 1897, p. 287) (*supra* p. 158)

reads as follows:

"SEC. 110. Nothing in this act shall be construed "as repealing or in anywise modifying the provisions "of any other act relating to the subject of irrigation "or water commissioners, except such as may be con- "tained in the act, entitled an act to provide for the "organization and government of irrigation districts, "and to provide for the acquisition of water and other "property, and for the distribution of water thereby for "irrigation purposes, approved March seventh, eigh- "teen hundred and eighty-seven, and the subsequent "acts supplementary thereto, and amendatory thereof, "all of which acts, so far as they may be inconsistent "herewith, are hereby repealed."

The legislature had plenary power to repeal so much of the Wright Law and its amendments, as limited the time within which the organization of an irrigation district might be assailed. For a statute of limitations may be repealed so as to revive against a debtor a contract debt already barred, without depriving him of his property in violation of the Fourteenth Amendment to the Constitution. The bondholders in this case stand in no better position than such a contract debtor does.

Campbell v. *Holt*, 115 U. S. 620; s. c. 6 U. S. Ct. Repr. 209;
Hulbert v. *Clark*, 128 N. Y. 295, 297–298;
Landa v. *Obert*, 76 Tex. 33, 46; s. c. 14 S. W. Rep. 297, 300;
Lewis v. *Davidson*, 51 Tex. 257.

The limitation clause in the Amendment of 1891 (Stats. 1891, p. 144) (*supra* p. 36) to section 3 of the Wright Law (Stats. 1887, pp. 30, 31) (*supra* p. 32) is not germane to the original act, nor within the scope of its title. The amendment is, therefore, void.

Weigel v. *City of Hastings*, 45 N. W. Rep. 694, 696; s. c. 29 Neb. 379;
Holmberg v. *Hauck*, 20 N. W. Rep. 279; s. c. 16 Neb. 337;
State v. *Nomland*, 57 N. W. Rep. 85, 87; s. c. 3 North Dak. 427;
Percival v. *C. & W. H. Irr. Dist.*, 46 Pac. Rep. 1035–1036;
Bell v. *State*, 20 So. Rep. 450;
Thomas v. *Wabash etc., Ry. Co.*, 40 Fed. Rep. 126; s. c. 7 L. R. A. 545; s. c. 57 N. J. L. 143;
Spier v. *Baker*, 120 Cal. 370;
City of Detroit v. *Donovan*, 70 N. W. Rep. 894.

Section 24 of Article IV of the Constitution of California reads as follows:

"Every Act shall embrace but one subject, which "subject shall be expressed in its title."

The title of the Wright Law gives no intimation warranting any provision therein regulating the practice of courts of justice, or that the time for the commencement of any action, or for the making of any defense, such as the one in question, shall have any special limitation.

It is a well established rule that statutory limitations pertain to the remedy and are enforced only by the

Courts of the forum. They pertain, therefore, only to matters of practice.

The limitation clause is void because it is special legislation violating subdivision three of section 25 of article VI of the Constitution of California.

It is void also because violating subdivision 32 of of said section 25.

It is void also because violating subdivision 33 of said section 25.

Section 25 of article IV of the Constitution of California prohibits special legislation in the following cases:

"3rd. Regulating the practice of courts of justice.

"32nd. For limitation of civil or criminal actions.

"33rd. In all other cases where a general law can "be made applicable."

There is no sound reason why a special statute of limitations should be enacted in favor of irrigation districts, not equally applicable to other quasi public corporations.

Cullen v. *Glendora*, 113 Cal. 503;
Foxworthy v. *Hastings*, 37 N. W. Rep. 657, 660;
Ex parte Clancy, 90 Cal. 553;
City of Tulare v. *Hevrin*, 58 Pac. Rep. 530, and cases there cited;
Johnson v. *Goodyear Min. Co.*, 59 Pac. Rep. (Cal.) 304;
Krause v. *Durbrow*, 60 Pac. Rep. (Cal.) 438;
Pasadena v. *Stimson*, 91 Cal. 238;
Bruch v. *Colombet*, 104 Cal. 347;

People v. *C. P. R. R. Co.*, 105 Cal. 576;
Cf. Simpson v. *Kentucky etc., Assn.*, 41 S. W. Rep. 570.

The provision that no defense shall be made affecting the validity of the organization of an irrigation district, unless made within two years after the entry of the order declaring the district organized is unconstitutional. It is an attempt to deprive persons of property without due process of law. A statement of the rule governing cases of this kind is found in *Cooley's Constitutional Limitations* at page 366. It is there said:

"All limitation laws, however, must proceed on the "theory that the party, by lapse of time and omissions "on his part, has forfeited his right to assert his title "in the law. * * * One who is himself in the "legal enjoyment of his property cannot have his "rights therein forfeited to another for failure to bring "suit against that other within a time specified, to test "the validity of a claim which the latter asserts, but "take no steps to enforce. * * * Limitation laws "cannot compel a resort to legal proceedings by one "who is already in the complete enjoyment of all he "claims."

Citing:

Groesbeck v. *Seeley*, 13 Mich. 329;
Case v. *Dean*, 16 Mich. 12;
Baker v. *Kelly*, 11 Minn. 480.

See also,

People v. *Simon*, 52 N. E. Rep. at p. 915.

CONCLUSION.

For the reasons which we have stated in the foregoing discussion, it is submitted that the attempted organization of the Tulare Irrigation District was absolutely ineffective and void, and that the purported bonds were issued without any valid authority and were null and void, even in the hands of *bona fide* purchasers for value, without actual notice of the defects in the proceedings which resulted in the issuance of the bonds. It is further submitted that the Circuit Court erred in refusing to allow the plaintiffs in error to prove the facts which show the invalidity of the district, and in giving judgment for the plaintiff upon evidence such as that adduced by him; and that the judgment should be reversed.

Respectfully submitted,

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No. 508.

By S. F. Leib for

Office Supreme Court U. S.
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OCTOBER TERM, 1901.

No. 508.

TULARE IRRIGATION DISTRICT, ET AL.,
PLAINTIFFS IN ERROR,

vs.

ALFRED SHEPARD, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

S. F. LEIB,
Attorney for Defendant in Error.

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The briefs and record are being printed at the same time and about three thousand miles apart. They will be completed barely in time for submission of the case within the first ninety days of the term (all parties being desirous of an early decision), so the record is not available for the citation of its pages in making up an index of facts.

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IN THE

Supreme Court of the United States

TULARE IRRIGATION DISTRICT, GEORGE G. KELLEY, AND G. GARIBALDI, Executor of the Last Will of B. W. Jauchius, deceased,
PLAINTIFFS IN ERROR,

vs.

ALFRED SHEPARD, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The simple statement of this case should be a complete answer to the writ of error.

Water is the life blood of California. Without it, much of the State would be an arid waste. With it, the desert places have been made to overflow with abundant fruitfulness. Hardly any place in the State, no difference where situated, that is not greatly benefited by it. But water must be brought from great distances,

sometimes twenty miles or more. Large expenditure to that end is necessary. Bodies of land, tens of thousands of acres in extent, the richest the sun ever shown upon, were in sore need of it. The investment to bring water to his land was entirely beyond the reach of any one owner; but if he could have water, plenty and abundant, his land would be rendered much more valuable.

In view of this crying necessity, the "Wright" act was passed in 1887 by the Legislature of California, the act taking its name from its author, a prominent lawyer from Modesto. With this act this Court is thoroughly familiar, having declared its constitutionality in the case of Fallbrook Irrigation District vs. Bradley, 164 U. S., 112.

The object of this act was to enable the many to do what could not be done as an individual undertaking.

The plan of the law was to form irrigation districts where they were needed, and for that purpose the law provided that a given number of persons might petition the Board of Supervisors for the formation of such district. The petition was to be published in a newspaper, "together with a notice stating the time of meeting at which the same will be presented." It was stated by this Court in the Fallbrook case that something like thirty districts had been organized under this law and had incurred a bonded indebtedness of over eight millions of dollars. The statement is very clearly within the limits of the facts.

One of the very first, probably *the* very first, of

these districts, viz., the Modesto Irrigation District (before this Court in Tregea vs. Modesto Irrigation District, 164 U. S., 179), to be formed, was formed under the legal direction of Mr. Wright himself, the author of the law. The notice attached to and published "with" the petition, he did not have signed by the petitioners. He drew the law and probably thought he knew what it intended, but he did not think it intended that the notice published "with" the petition should be signed. Notices of various kinds of meetings, etc., are constantly seen in the newspapers which are unsigned. He probably intended such a notice when he drew the law. Possibly he had attended funerals with no other information concerning the same than that derived from funeral notices, which are never signed. He allowed no possible misconstruction or doubt to rest in the land owner's mind, however, for he provided in the law that the notice and the petition should be published "*together.*" No one could read the petition and then the notice expressly referring to it, and published "with" it, and have the slightest misinformation or doubt that the petition would be presented at the time mentioned in the notice. It is claimed that every single district in the State except one was organized without the notice being *signed*, and that one disincorporated without issuing bonds; the notice, however, was always published "with" the petition, sometimes preceding it as in the Fallbrook Irrigation District, and sometimes succeeding it as in the Tulare District and the Modesto District, but the notice always expressly referred to the petition and was always published "with" it. So if that be a de-

fect and a defect which will invalidate the bonds of these districts in the hands of innocent purchasers, the entire indebtedness of these districts, amounting to many millions of dollars, will be invalidated. The notice in this case was unsigned, but expressly referred to the "foregoing" petition and was published "with" the petition, as the statute prescribed. The supervisors considered this a good notice and found, *in the very terms of the statute*, that notice was given. If the statute, when it used the word "notice," meant a *signed* notice, then the supervisors, when they found that "notice" was given, found that a *signed* notice was given, for both the legislators and the supervisors used precisely the same word.

The bondholders in this case are innocent purchasers of these bonds, with no notice of any defect whatever.

That the supervisors should have thought this a good notice is not strange. Every taxpayer in the district thought it a good notice, and paid taxes for years to the district. Every lawyer in the State thought it a good notice, until in the case of the Central Irrigation District, 117 Cal., 382, the learned counsel writing the brief on the opposite side of this case was retained in that case, and he discovered and convinced the Court that while the taxpayers of that District had always *thought* that they had had notice, both when they first read it and at all times thereafter, yet, after all, they were mistaken. That case was decided in 1897. In the many cases that had been litigated up to that time in the Supreme Court of California, con-

cerning the validity of these districts, not a single lawyer but thought his clients had *had* notice (not only *in fact*, but in the form that the law required), and not a single taxpayer in those many litigated districts who suggested to his lawyer or even suspected that he had had no notice. It would seem that when practical experience had demonstrated that the object of the statute had been attained, viz.: that information had actually been given by a notice which the taxpayers *thought* was legal, that if after all it was not in strict compliance with the statute, the defect was an irregularity merely, and of the most trifling character at that, which could only be availed of upon a direct attack, if at all. The notice in this case, like the notice in all the cases, was in due form, expressly referred to the petition, and was (as the statute required) published "with" the petition. They were in the same type, and black lines across the column enclosed the two "together." The petition was heard, and all who could show that they should be excluded (and there were a number) *were* excluded; and thereupon the board, in the manner provided by the statute, submitted to the electors of the contemplated district whether they should have a district or not. There were 484 votes cast on this proposition, *all of which were in favor* of forming the district *except seven*. It was practically *unanimous*. Thereupon the Supervisor declared the District formed, and described its boundaries and recorded its order with the County Recorder.

Now, what happened then?

The district being thus organized, *legally*, as it and

everyone else *then*, and for at least five years thereafter, thought, immediately commenced to act as a district in every particular, and has continuously continued to so act *down to this day*. The stipulation in that regard reads as follows:

"The persons declared by said order of the Board of Supervisors to have been elected as officers of said District immediately thereafter purported to organize as such officers, and thereupon entered upon their duties as such officers the same as though said District had been legally organized, and as though they had been legally elected such officers, and they and their successors in office have ever since continued to act as such officers and to maintain the name of "Tulare Irrigation District," and in its name have caused the defendant to act as though it was in every respect legally organized as an irrigation district, under said act of the Legislature, and in that behalf has at all such times had the name "Tulare Irrigation District" printed upon a sign above a door in front of an office in which the archives and papers of said defendant are kept; and its Board of Directors have met from time to time in such room from the time of such purported organization thereof until the present, weekly and sometimes oftener, averaging twice a month, and in the year 1891 1892, 1893, its Board of Directors purported to issue bonds of such Tulare Irrigation District in the sum of $500,000, being 1,000 bonds of the face value of $500 each, as hereinafter stated,and levied assessments on the property claimed to be embraced in said District, purporting to act in so doing under the said act of the legislature, and previous to July 1, 1896, it assessed, levied and collected taxes upon the lands claimed to be in such district of over $100,000 and paid the same out as interest upon such bonds; that it has engaged in litigation as plaintiff in———suits; ———of them,

before the issuance of said bonds, and therein alleged that it was a corporation under the provisions of the said act of the legislature, and from said time of its said purported organization until the present time, whatever it has done and performed, it has done and performed in the same manner as if it had been legally organized as such District in full compliance with the law, and so continues to act and hold itself out as such corporation organized under said law."

Now these districts naturally wanted to sell their bonds at the highest possible price. Capital is proverbally timid and with just reason. No man wants to invest his money on a low security (and 6 per cent was a very low interest in 1887, as low as 4 per cent is now, as will be seen by comparing government bond interest then and government bond interest now) unless he is *sure* to get the principal as well as the interest.

In order that the district should sell its bonds at the highest rates, there must be no contests—no litigation. The "Wright Act" already contained the following provision:

"Said bonds * * * shall be negotiable in form. * * * Said bonds shall express on their face that they were issued *by authority* of this act."

This provision was undoubtedly to bring the bonds within the many decisions of this Court that a negotiable bond with such a recital was conclusive as against all objections to its validity. Still, to make assurance doubly sure: to give these bonds the highest possible market value: to enable the district to get as

much as possible for them: to give every objector a chance to object before the bonds were offered for sale, and if he failed to object (or objecting, if his objections were overruled), to make these bonds impregnable (all for the benefit of the district in enabling it to sell them for the highest possible price), a subsequent act, the act of 1889 (Stat. Cal. 1889 p. 212) was passed for the purpose of having all possible objections to the validity of these districts or their bonds settled once and for all. The act provided that the directors of the district might apply to the court for a decree of confirmation of the organization of the district and of its bonds. Anybody could file objections and the matter could then be litigated. The history of the litigation of this State shows that those having objections were not slow to file them. The Supreme Court of California, both before and after the decision of this Court in the Tregea case has consistently decided that such a proceeding was a proceeding *in rem*, and binding on all.

Section 3 of the "Wright Act" was also amended in 1891 (Stat. Cal. 1891, p. 144) to the effect that the validity of the organization of a district could only be attacked within two years. This limitation has been consistently upheld by the Courts in California.

With these laws in force, this district submitted to the people of the district the question whether bonds should be issued. It is worthy of note that only fifty votes were cast against the bonds out of a total of 398, substantially 400 votes. In other words, seven-eighths of the votes were for the bonds. Thereupon,

to avail itself of the confirmation law, to realize the highest possible price from the sale of the bonds if they were valid, and to know it, if they were not, the district made application to the Court to determine its own validity and the validity of its bonds which it proposed to sell. Notice was given of the application in the manner herein stated. No one at that time had any objections and none were filed. Full proof was made to the Court and the Court found and adjudged that the district was legally organized and that its bonds were valid. The bonds were then sold during the years 1891 and 1892 and 1893. The lands were taxed to meet the interest, *and the taxes were paid from the start* without dissent or murmur. No *certiorari* was brought to test the organization of the district. No complaint was made for a *quo warranto*. No injunction against the issuance of bonds. Nothing was done to give the slightest notice of trouble to intending purchasers. Nothing whatever was done to alarm them. On the contrary the payment of the taxes for the payment of the interest was a proclamation from the housetops, not only by the district, but by all the taxpayers thereof, that it was a *valid* district and that these were *valid* bonds. Upon no other theory could they have been paying these taxes. In consequence the purchasers not only relied upon the recitals contained in the bonds, not only relied greatly upon the decree of confirmation, but also *very* greatly upon the fact that here was a district whose existence and whose bonds were not only unquestioned by the taxpayers, but *which was fully acquiesced in by them*. Not only the purchasers of the last of these bonds but

all subsequent purchasers from the first purchasers (and such are the bonds in suit) were thereby led by these taxpayers to believe this district was *legally* organized and that these bonds were *valid; for the interest on these bonds were promptly paid up to July, 1896.*

With the money secured by the sale of these bonds, with *our* money, the district built large and extensive canals and ditches, procured water rights and, for eight years have been irrigating lands in this district and are so doing this very day. And yet they say that while the district has *done* and *is* doing this, the district *does not exist*, and that neither it nor its taxpayers *owe us a cent.*

The chief reason for their making this claim is that the 131 taxpayers who signed the petition (almost one-third of all the taxpayers in the district) did not sign the notice which they attached to their petition when they published it. Whose fault was it, if it was the fault of anyone, that they did not sign it? Their own. And they propose to visit the consequences of their own fault upon those who purchased their bonds and who, when the purchase was being made, were induced to believe that no error had been committed by the fact that they had never questioned the legality of the district but affirmed its validity by paying the taxes which it had levied!

The comments of this Court in the case of White vs. Luning, 93 U. S., 523, are quite applicable in principle to such a claim.

The immediate cause of the first failure to pay interest (on July 1st, 1896,) was because of the decision of the lower court in the case of Fallbrook Irrigation District vs. Bradley, declaring the Wright law unconstitutional. This Court reversed that decision, but hardly had that decision been announced (Nov. 1896,) until the decision of the Supreme Court of California was announced in the Central Irrigation District case (June. 1897,) holding that the notice published with the petition for organization of a district must be *signed*. It is true that decision was in a case where the attack upon the organization was *direct* and not collateral, a distinction recognized in the decision itself. It is true that that point received a vote of a bare majority only of the Court. The Court refused to say that the bonds of that district were *not* good (rather intimating to the contrary), but nevertheless some of the districts (including this one) are refusing to pay the interest on the bonds, holding that decision will sustain them.

The bonds in suit were purchased in the utmost good faith, and for full value, or, as the stipulation expressed it, " The said prices so paid to said Wesley A. Jacobs for the said bonds so purchased from him, and the said prices so paid to said R Linder for said bonds so purchased from him and the said prices so paid to said F. G. Shepard for the said bonds so purchased from him, were the full value of said bonds so purchased at the time they were so purchased, and each of said purchasers, so purchasing the same, did so purchase the same in good faith for full value, in the usual course of business without any actual notice or knowledge of any defect, informity or invalidity of said bonds

or any of them, and without any actual notice or knowledge of the non-performance or non-observance of any requirements of the law necessary to their validity, but so purchased the same under the full belief that all requirements of the law necessary to their validity had been performed and observed and complied with."

The interest not being paid on the bonds in suit, this action was brought upon the coupons in 1898.

Preparatory to bringing the action, and on January 18th, 1898, the plaintiff below procured a certified copy of the Judgment Roll of the decree of confirmation, which last named decree was dated Sept. 15th, 1890. The time for appeal from that decree had expired without appeal, one year after its date. So, at least, the decree then became and was final at all times thereafter. This certified copy of the judgment roll was introduced in evidence. After the date of the certificate to the certified copy of such judgment roll (which was January 18th, 1898,) to wit, on April 18th, 1898, three tax payers purported to file an answer in said proceedings, which answer does not seem to have been served on the attorneys of record of the district or in fact upon any one. Upon this purported answer a trial is recited to have been had and the organization of the district was thereupon declared to have been illegal and the bonds were thereby declared void—*all this after the decree of confirmation had become final and on which the holders of the bonds were securely resting, and without their being informed that the final decree was being attacked.*

No showing was made that this final decree of con-

firmation could thus be annulled or ignored, although the judge did say in his opinion that "subsequent" to that final decree a complaint was filed by Jauchius and others against the district to set aside the decree.

The exact date of filing that complaint to set aside this decree is not stated by the judge, but (by the permission of opposing counsel) I give the exact dates from a certified copy of those proceedings.

The complaint was filed in the Superior Court of Tulare County, California, on April 4th, 1898, entitled "B. W. Jauchius, J. L. Gould, George G. Kelly and Ralph Jones, Plaintiffs, vs. The Board of Directors of Tulare Irrigation District, Defendants," and was signed "C. L. Russell and G. W. Zartman, Attorneys for Plaintiff." Summons issued same day and served April 5th, 1898. General Demurrer of defendants signed "E. W. Holland, Attorney for Defendants," was filed April 15th, 1898. Judgment by default against defendants rendered and entered same day, April 15th, 1898, reciting that demurrer was submitted to the Court, on that day (same day it was filed) by both parties and overruled by the Court, "and said defendants having refused and declined in open court to answer plaintiffs complaint herein" the defendants were defaulted and judgment rendered against them according to the prayer of the complaint.

No bondholder was made a party in that action. It may well be imagined that in 1898, after the district had sold its bonds, built its irrigating works, had our money and no more bonds to sell, defaulting its inter-

est and claiming it did not owe a cent, it would make no very vigorous fight. It appears from the record here in that the attorneys signing the ~~answer~~ complaint as attorneys *against* the district in that action are the same attorneys signing the demurrer and answer as attorneys *for* the district in this action. I do not refer to the *counsel* who signed the answer in this action. They had nothing to do with that transaction. The history of what happened in the action to set aside the final decree, as given by the Judge in his opinion, is unique and, it is submitted, is unparalleled in the history of jurisprudence in civilized countries.

As will be seen by his opinion offered in evidence, in speaking of the proceedings in that case, he said:

"That matter was presented to the Court on demurrer to the complaint, which demurrer was submitted to the Court without argument, and at once overruled, in accordance with a well established rule of this Court, to overrule all demurrers that are submitted without argument. No answer was made to the complaint, and the petitioner took the relief asked for by default, and the Decree of Confirmation was set aside by the order of the Court."

Think of it! A tax payer sues a district to set aside a final decree on the faith of which bondholders have invested their money. Both parties to that suit are interested in avoiding the bonds. The party sued does not make any defense, of course; it makes default. The judge thereby gives judgment against the defaulting district as prayed for by the tax payer and enters judgment that the decree of confirmation be set aside and vacated. All this could be done (and probably

was done) in less than five minutes—in the time it takes to tell it. The opposing (?) attorneys walk into court; the attorney for defendant with a demurrer in his pocket and in a few minutes they all walk out again, the other attorney with a signed decree in *his* pocket! In this manner, by a simple twist of the, wrist, the district and its taxpayers, by this "arrangement" (to use no *stronger* word) between themselves *and themselves only*, have paid their debt of a half a million of dollars *which they owe to somebody else!*.

It was no *real* litigation. The evidence concerning this "second" decree was refused admission by the Circuit Court, as it ought to have been.

The district itself has paid no attention to this alleged "second" decree, *for it has continued to act and is now acting as such district*, as appears from the stipulation.

ARGUMENT.

I.

The plaintiff is a bona fide holder of the bonds sued upon, having purchased them in the usual course of business for full value and without any notice or suspicion of any invalidity concerning them.

This, as we have seen from the foregoing statement of the case, is fully stipulated, and this fact is a complete answer to almost every point made, and almost everything said by the learned counsel who wrote the brief upon the other side of this case. I shall have

occasion to refer to this fact at various times hereafter.

II.

The district is a de facto public corporation. This is as far as bona fide purchasers of its bonds need to go.

The only real point made by the learned counsel is that the notice of the hearing of the petition for the organization of the district was not signed, and hence that the district is not a *de jure* corporation. But we maintain that under the law it is entirely immaterial whether it was a *de jure* corporation or not. Before taking up the authorities upon this proposition, permit me to suggest to the Court that, if a purchaser of negotiable bonds cannot rely upon the legal existence of a municipal or public corporation when that corporation is exercising, unquestioned, all the powers it could exercise if it were legally organized, then there will be an absolute end to the sale of all municipal bonds of every nature and description. It is claimed by the counsel in this case that the findings of the Board of Supervisors of the fact that notice was given, cannot be relied upon by a purchaser, even if he had looked at those records.

The necessary logical result of such a doctrine would be that, before a purchaser of those bonds could safely purchase them, he would have to hunt up the newspaper in which the notice was published, and see for himself what was done in that regard. Counsel seems to ignore the statute itself which provided that the bonds should be "negotiable in form" and

should recite that they were issued "by authority" of that statute.

These requirements by the statute certainly meant something. They certainly did not mean that each purchaser must for himself look into the organization of the district, even to the examination of newspaper offices before he could safely buy a bond. A bond with such restrictions would not bring twenty-five per cent of its face value. In fact, it could not be sold at all, except as a gambling proposition, and, of course, at a gambling price.

The whole object of the law in trying to make those bonds bring as much as possible would be defeated.

That a *bona fide de facto* corporation, acting with all the powers of a regularly organized corporation, can incur debts and issue valid bonds is established by the overwhelming weight of authorities.

That doctrine has been conclusively settled very recently in the case of Shapleigh vs. City of San Angelo, 167 U. S., 646, which was a case where a municipal corporation had been dissolved by a decree in *quo warranto*. During its existence, however, the corporation had acted as a *de facto* corporation and had issued certain bonds. Referring to that time, this Court said:

"As things then stood, it is plain that the city could not have set up to defeat its obligations, any supposed irregularity *or illegality* in its organization. The State being the creator of municipal corporations, is the proper party to impeach the validity of their crea-

tion. If the State acquiesces in the *validity* of a municipal corporation, its corporate existence cannot be collaterally attacked.

This is the general rule, and it is recognized in Texas: 'If a municipality had been illegally constituted, the state alone can take advantage of the fact in a proper proceeding instituted for the purpose of testing the validity of its charter.' Graham vs. City of Greenville, 67 Tex., 62, 2 S. W., 742."

It is true that later in the opinion the Court uses the language quoted by counsel on the other side, to-wit:

"The doctrine successfully invoked in the Court below by the defendant, that where a municipal incorporation is *wholly void ab initio, as being created without warrant of law*, it could create no debts and could incur no liabilities, does not, in our opinion, apply to the case of an *irregularly* organized corporation, which had obtained, by compliance with a general law *authorizing* the formation of municipal corporations, an organization valid as against everybody except the State acting by direct proceedings. *Such* an organization is merely voidable, and, if the State refrains from acting *until after debts are created*, the obligations are *not* destroyed by a dissolution of the corporation."

But it is perfectly evident from the previous language of the Court that when it used the word "irregularly" it did not intend to distinguish such a case as this from an irregularly formed corporation.

On the contrary the defect here, if defect it be, could as well be classed as being a mere irregularity, as the defect in that case was classed as being an irregu-

larity only. When this Court uses the language "the doctrine successfully invoked in the Court below by the defendant that where a municipal incorporation is wholly void *ab initio* as being created without warrant of *law*" it referred to the fact that there was *no valid law* under which such a corporation *could be formed*, such as the case of Norton vs. Shelby County, 118 U. S, 425, which was a case where the law under which the corporation claimed to be acting was *unconstitutional*. In fact, in such a case there is *no* law. In the Shelby case it was held that there cannot be a *de facto* corporation, in other words, a corporation claiming to be acting under some *law*, when there was in fact *no such law in existence*.

It will be noticed that the Shapleigh case was one where the question of the rights of innocent *bona fide* holders of bonds were concerned. The books are full of similar decisions. Many of them go to the extent of upholding this doctrine even where the rights of innocent third parties have not intervened.

In a prior case in this Court, the following expression was used in the opinion:

"The plaintiff had in good faith attempted to legally organize as a corporation, and had long acted as such, and was at least a corporation *de facto*, which is all that is necessary to enable it to maintain an action against anyone, other than the State, who has contracted with the corporation, or who has done it a wrong." Bank of Dandridge, 12 Wheat, 64, 72; Conard vs. Insurance Co., 1 Pet, 386, 450; Chubb vs. Upton, 95 U. S., 665; Insurance Co. vs. Frothing-

ham, 122 Mass., 391; Turnpike Co. vs. Cutler, 6 Vt., 315; Cincinnati, etc., R. Co. vs. Danville etc. R. Co., 75, 111, 113; Stockton, etc., R. Co. vs. Stockton, etc., R. Co., 45 Cal., 680."

Baltimore & P. R. Co. vs. Fifth Baptist Church, 137 U. S., 568.

It will be noticed that the doctrine was applied in the last case above cited, even in a case of tort.

"The objection that the corporation was not organized within the time limited by the charter is unavailing. It is in effect a plea of *nul tiel* corporation. In Kayser vs. Trustees of Bremen (16 Mo. 88), the Supreme Court of the State said: "It cannot be shown in defense to a suit of a corporation that the charter was obtained by fraud; neither can it be shown that the charter has been forfeited by misuser or nonuser. Advantage can only be taken of such forfeiture by process on behalf of the State, instituted directly against the corporation for the purpose of avoiding its charter, and individuals cannot avail themselves of it in collateral suits until it be judiciously declared.' See also Smith et al. vs. County of Clarke, 54 Mo., 58 which is to the same effect. *This case being a Missouri case, these authorities are conclusive.*"

County of Macon vs. Shores, 97 U. S., 277.

See also County of Rolls vs. Douglas, 105 U. S., 730. Aller vs. Town of Cameron, 3 Dill., 198.

In a recent case in California, which, under the doctrine of the case of Macon v. Shores just quoted, *must be binding on the Supreme Court of the United States*, the very question came up with reference to one of these irrigation districts, where

a tax payer attempted to enjoin an assessment levied by an irrigation district, upon the ground "that the Board of Supervisors acted without their jurisdiction in effecting its organization," and the Supreme Court of this State said:

"An irrigation district of this character is a public corporation, formed under a general law, and its object is the promotion of the general welfare. (People v. Selma Irrigation, District, 98 California, 206, and cases there cited.)

Corporations organized under the act of the legislature popularly known as the Wright Act, being public corporations, it is immaterial whether they be corporations *de jure* or *de facto*. That is a matter which cannot be inquired into upon a collateral attack; and in a case like the present, where the validity of an assessment levied by such a corporation is the subject of litigation, the validity of such assessment does in no way rest upon the fact of the *de jure* character of the corporation. This principle must be considered settled law in this State (Dean v. Davis, 51 Cal., 411; Reclamation District v. Gray, 95 Cal., 601; Swamp Land District No. 160 v Silver, 98 Cal., 53.)

Quint v. Hoffman, 103 Cal. 507.

This case was approved upon this point as to an irrigation district in a very recent decision in California, wherein many other cases are cited to the same effect, where it is said:

"This court has repeatedly held that corporations of the character of defendant are *quasi* public corporations; and by the complaint in this action it appears that the defendant is, at least a *de facto quasi* public corporation. This court has also repeatedly held, that

upon collateral attack the validity and regularity of the organization of this class of corporations cannot be questioned. (People v. La Rue, 67 Cal., 530; First Baptist Church v. Branham, 90 Cal., 22; People v. Montecito Water Co., 97 Cal., 276; 33 Am. St. Rep. 172; Reclamation Dist. v. Gray, 95 Cal. 601; Swamp Land Dist. v. Silver, 98 Cal., 51; Quint v. Hoffman, 103 Cal., 506; Reclamation Dist. v. Turner 104 Cal., 334; Hamilton v. County of San Diego, 108 Cal. 284.)

If a proceeding in *quo warranto* by the State must be resorted to in order to test the *de jure* character of these corporations, the confirmatory act would serve no purpose on the statute books if the state be not bound by the judgment rendered in the proceeding.

Indeed, it would seem, *in the light of the above decisions of this Court*, that this statute was enacted for the very object of binding the *State*. We see no other *practical* purpose that could have actuated the mind of the legislature in creating it."

People v. Linda Vista Irr. Dist., 128 Cal., 484—5.

The very point sought to be reached in the above decision, was that the notice had not been signed, and it will be seen by the latter part of the above quotation that, in the opinion of the Supreme Court of California, in this very recent case, no private individual can raise that point in any proceeding, as against a *de facto* corporation. It was for that reason that the court says that the only object of the statute was to bind the State, inasmuch, as by the decisions which it quoted, a *de facto* corporation would be sufficient upon that point, as well as every other point, as against everybody but the State.

In one of the cases cited by the last case, the facts

were that a school district had been attempted to be formed within the territorial limits of the City of San Diego, which was contrary to the statute. Nevertheless, it had acted as a *bona fide de facto* corporation as a school district, issued bonds and levied taxes with which to pay them; a tax-payer, paying the tax, sued to recover it back on the ground that the organization of the district was a nullity, but the Court said:

"Since the Coronado school district had a *de facto* existence, the plaintiff could not have enjoined the collection of the taxes, nor have resisted an action for the same, on the ground of *illegality* of its organization. (Quint v. Hoffman, 103 Cal. 506; Dean v. Davis, 51 Cal. 406; Reclamation Dist. v. Turner, 104 Cal. 334; Swamp Land Dist. v. Silver 98 Cal., 51);—and, for reasons at least as strong, should not recover the money when paid."

Hamilton v. County of San Diego, 108 Cal. 284.

Many other California cases might be quoted to the same effect. The United States courts in California have equally upheld this doctrine in these irrigation districts, where the precise point was being made, that is being made in this case, namely, that the notice was not signed in the matter of their organization.

In a case in the Circuit Court, Northern District of California, the notice reads as follows:

"Notice is hereby given, that the above petition, will be presented to the Board of Supervisors at their regular meeting on Wednesday, May 11, 1887, at 11 o'clock A. M."

This was the Modesto District, the same that was before this Court in the Tregea case. After showing that this district was claiming to have been organized under a valid law, which had been held constitutional by the Supreme Court of the United States in the Fallbrook case, the learned judge demonstrated by ample authority and reason, that the defendant could not attack the validity of the district.

Herring v. Modesto Irrigation District, 95 Fed. 712.

That case, like this, was a suit by the bond holders upon their coupons.

In another case in the Circuit Court of the United States in California, in the southern district, the same precise point was involved, and for the very reason that is given in this case, namely, that no notice was ever given of the presentation of the petition to the Board of Supervisors, the same not having been signed, and the learned court held that a de facto corporation could not be questioned by an individual.

Miller v. Perris Irrigation District, 85 Fed. 698, et seq.

So many cases have been cited to the same effect in the cases already adverted to that it would seem unnecessary to burden the Court with still further citations; but should the Court desire to consult still further authorities a few more are added here.

Graham vs. City of Greenville, 67 Tex. 62, and cases cited.

Dallas vs. Huydekiper, 154 U. S., 654.
Board vs. Thomas, 61 Fed., 914.
Coler vs. Dwight Township, 55 N. W., 587.
Dean vs. Davis, 51 Cal., 406.
Reclamation District vs. Gray, 95 Cal., 601.
Swamp Land District vs. Silver, 98 Cal., 51.
Reclamation Dist. vs. Turner, 104 Cal., 334.
F. L. and Trust Co. vs. Toledo, etc. Ry Co. 67 Fed., 55, and cases cited.
Fitzpatrick vs. Rutter, 160 Ill., 282.
State vs. Leatherman, 38 Ark., 81.

The last is a very leading case. There a corporation had acted *de facto* and had issued bonds. The Court said there was no jurisdiction and the order creating the corporation was void, but it had been an existing *de facto* corporation all the time from 1873 until the decision. That was a *quo warranto* proceeding and it was held that even the State could no longer attack the corporation.

To the same effect on a *quo warranto* proceeding was State vs. Town of Westport, 116 Mo., 582.

In the case of In re Short, 47 Kas., 250, an immense number of cases are collected.

The last case was where a man was convicted under an ordinance of a town, the validity of the organization of which he disputed.

See also State vs. Fuller, 96 Mo. 165.

The above was a case where a man was indicted for

assaulting the city marshall of Ash Grove, a city of the fourth class which was formed under the general law. The defense of the defendant was that there was no such town, and hence no such officer, but it was held that it was a *de facto* city, and he could not raise the question as to its existence.

Very, very many authorities might be added, but I quote from a few only, in closing upon this point.

"A person who contracts with a corporation whether it be by a subscription of its stock or by promissory note, bond, mortgage or other form of contract is, in a suit upon such contract, estopped to deny the existence of the corporation; *and similarly when a body of persons hold themselves out as a corporation and contract as such they will be estopped to deny their corporate character.*"

7 Am. & Eng. Ency. of Law (2d Ed.), 668.

"An association which is assuming to be and has acted as a corporation and incurred obligations in that capacity; is estopped to deny its own corporation existence in order to relieve itself *or its members* from such liability."

8 Am. & Eng. Ency. of Law (2 Ed.), 769.

"The corporate existence of a municipal corporation cannot be attacked collaterally in a suit to enforce its bonds. A *de facto* corporation exercising the powers granted to a body legally organized is estopped to plead its illegality.

When a municipal body has assumed under color of authority and exercises for a considerable period of time with the consent of the State the powers of a public corporation of a kind recognized by organic law, neither the corporation nor any private party can,

in a private litigation, question the legality of its existence."

Simonton on Municipal Bonds, page 5.

Cooley on Constitutional Limitations (6th Ed.), 309-10.

"In proceedings to enforce ordinances, the *illegality* of a *corporate organization* cannot be shown to defeat a recovery; in such a collateral proceeding, evidence that the corporation is acting as such is all that is required."

1 Dillon Municipal Corporations (4th Ed.) 418.

(The italics are the author's.)

As has already been observed, were this *not* the rule, *municipal bonds would be a thing of the past.* Nobody would dare to buy them or, if they were bought at all, they would be bought, as already remarked, as a gamble, at gambling prices.

If we are right on the foregoing propositions, then that will, of course, end this case, and no further investigation need be made. As a matter of duty to my client, however, I feel it incumbent upon me to argue the other questions that have been raised.

III.

The defendant and its taxpayers are estopped from denying that the defendant is a valid corporation.

The defendant and its taxpayers have ratified the organization of the district.

As the authorities, which will be cited frequently, consider both the above propositions, I will consider

them together. We have already seen from the statement of the case that out of 484 votes cast on the proposition of establishing the district, only seven votes were against it, and when they came to voting for the bonds, only 50 voted against that proposition, out of 398 votes cast upon that proposition. Seven-eighths of the votes were in favor of the bonds, and nearly 69-70ths of the votes were in favor of the organization of the district.

It must have been evident to every taxpayer in the district that, if nothing was done to arrest subsequent proceedings, these bonds would be sold to innocent purchasers, and, if the present contention is true, that they, by standing by, would see an innocent purchaser investing his money, on the strength of the belief that the taxpayers' lands and other lands of the district were bound for its repayment.

A writ of *certiorari* would easily have reached every defect in the organization of the district. A complaint to the attorney general for a *quo warranto*, promptly made, would immediately be granted and the district declared null and void. An injunction against the officers from proceeding further, would readily have been granted; all this, of course, on the theory that they are right in their present contention. Instead of taking any of these proceedings, the taxpayers rested supine. They allowed the proceedings to go on and the bonds to be issued. They allowed a decree of confirmation to be taken without a protest. They allowed the two years provided by the statute to attack the organiza-

tion of the district to expire without any action what ever.

Not only that, but, knowing that these bonds would be sold, they permitted them to be sold, and have used the money to build their irrigation works, and are using those works this very day for the irrigation of their lands.

They have never offered to return a dollar of that money. They are using the water works which that money paid for.

Not only did they know that, if nothing was done, innocent purchasers would invest their money in these bonds, but they *assisted* to bring about that result by *promptly paying the taxes*, for the interest on the bonds as fast as they were issued. What purchaser would have the slightest suspicion of their being any invalidity about a district, or about its bonds, when the taxpayers were paying the taxes regularly, and so continued for eleven straight installments without a whisper of discontent?

If this were a private transaction, there is no question but what the district and these taxpayers would be stopped from denying the liability. A few cases will be given to illustrate this proposition.

In a case where an assumed agent sold a principal's property and paid the principal the money, the principal, or rather the heirs of the principal, were not permitted to question the authority, since they received the money and held on to it.

"The purchase money for the land was received by the principal and to permit her heirs after her death to repudiate the transaction on the ground that the power of attorney had been revoked, would be at variance with every principle of equity and fair dealing."

Williams v. Payne, 169 U. S., 55.

Speaking of a case where the *de jure* existence of a corporation was disputed, and where the corporation issuing the bonds, still held on to the proceeds arising from their sale, this Court said:

"*Common honesty* demands that a debt thus incurred *should be paid.*"

Commissioner v. Bolles, 94 U. S., 110.

Speaking of the doctrine of estoppel under such circumstances, this Court has said:

"The principle is an important one in the administration of the law. It not infrequently gives triumph to right and justice where nothing else could have saved them from defeat. It proceeds upon the ground that he who had been *silent* as to his alleged rights when he ought, in good faith, to have *spoken*, shall not be heard to *speak* when he ought to be *silent*. The Bank of the United States v. Lee, 13 Peters, 107.

He is not permitted to deny a state of things which, by his culpable silence or misrepresentations he had led another to believe existed, and who has acted accordingly upon that belief.

Morgan v. Railroad Co., 96 U. S., 720.

"Where a person *tacitly encourages* an act to be done he cannot afterwards exercise his legal right in opposition to such consent, if his conduct or acts of encour-

agement induced the other party to change his position so that he will be pecuniarily prejudiced by the assertion of such adversary rights."

Swain v. Seamens, 9 Wall., 254, 274.

"Where a person by word or *conduct* induces another to act on a belief in the existence of a certain state of facts, he will be estopped as against him, to allege a different state of facts."

Dolbear v. Livingston, 100 Cal., 621–2.

"There is no principle of law better settled, or resting on wiser considerations of public policy and higher considerations of justice, than that no person who has received and *retains* the fruits of a judicial proceeding can be heard to assail it, either for irregularity or *illegality*, to the prejudice of others who have in good faith relied and acted upon it as valid. In the application of this principle it is not of importance that the proceeding is void *because of want of jurisdiction in the court entertaining and sanctioning it.* The foundation of the principle is that parties cannot act upon and adopt such parts of a transaction as may be favorable and beneficial to themselves, and, at the same time, repudiate it so far as it may involve them in corresponding duties to others who have yielded the right and advantage to them."

Ions v. Harbison, 112 Cal., 271.

The Supreme Court of California quotes from the case of Dickerson vs. Colgrove, 100 U. S., 580, as follows:

"The vital principle is that he who by his language *or conduct* leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon

which he acted. *Such a change of position is sternly forbidden. It involves fraud and falsehood, and the law abhors both.*"

Carpey vs. Dowdell, 115 Cal., 687.

"The term 'acquiesce' as used here by the Court means a consent inferred from silence; a tacit encouragement. 'Where a person tacitly encourages an act to be done, he connot afterwards exercise his legal right in opposition to such consent, if his conduct or acts of encouragement induced the other party to change his position so that he will be pecuniarily prejudiced by assertion of such adversary claim.' (Swain vs. Seamens, 9 Wall. 254.) Acquiescence is where a person who knows that he is entitled to impeach a transaction or enforce a right neglects to do so for such a length of time that under the circumstances of the case the other party may fairly infer that he has waived or abandoned his right.' (Rapalje and Lawrence's Law Dictionary.) By accepting and *retaining* possession of the patents, the defendant virtually deprived Watkins of the use thereof, and indicated that he was satisfied with what Watkins had done under the contract.' Although Watkins continued in his employ for a long time after the contract was made, nothing was said about an assignment, both parties having apparently considered that none was necessary; and it would be a hardship now upon Watkins and his assignee if they should be deprived of the value of the property *through what was evidently a mutual mistake in regard to that matter.*"

Scott vs. Jackson, 89 Cal., 263.

"When they neglect to promptly and actively condemn the unauthorized act, *and to seek judicial redress* after knowledge of the committal of it, *this will be deemed an acquiescense in it*, and if innocent third

persons have been led thereby to put themselves in a position from which they cannot be taken without loss, if the act were held invalid, the stockholders will be *estopped* from questioning it."

Sheldon H. B. Co. vs. Eikemeyer H. B. M. Co., 90 N. Y., 613-4.

"The second cause upon which appellant bases his right to an injunction would be a sufficient one if urged by a person who had not *estopped* himself by his *silence.* * * * The appellant made no objection *until after the work had been fully completed;* he is not now in a situation to complain of the insufficiency of the notice of the letting of the contract. *Having received the full benefit of the work done by the contractor, he cannot now escape payment upon the ground that proper notice of the letting of the contract was not given.*"

Muncey v. Joest, Treasurer, et al., 74 Ind., 413.

The above was a case where no bonds were involved and where a drainage district had cut a ditch through the lands of appellant, and when he was called upon to pay his share under an assessment, he made the objection of want of proper notice.

The Court held there was not a proper notice of the letting of the contract for the ditch, but held as above stated.

Of course authorities might be multiplied along this line indefinitely.

Now the question arises, do corporations and their shareholders or taxpayers (according as to whether it is a private corporation or a public one), stand upon any different footing as to *honesty* in matters of this

kind? Must not a corporation, public or private, be just as honest as a private individual and be held to just as strict a liability, where a question of right is concerned?

"A corporation quite as much as an individual, is held to a careful adherence to ***truth*** in their dealings with mankind."

Hackett v. Ottawa, 99 U. S., 96.

"Corporations are as strongly bound to an adherence to ***truth*** in their dealings with mankind as are individuals, and they cannot by their representations or ***silence*** allow others to part with their money or property and then repudiate the obligation for which the money was expended and which their statement represented to be valid."

Natl. Ins. Co. vs. Board of Education, 62 Fed. 784-5.

"It is well, occasionally, to recall the fact that there is no more reason to permit a municipal government to repudiate its solemn obligations entered into for value than there is to permit an individual to do so. Good faith and fair dealing should be exacted of the one equally with the other."

Meyer vs. Brown, 65 Cal., 589.

In the application of this rule, to corporations public or private, a few of many cases will be cited.

"While Courts may properly see to it that proceedings for casting burdens upon a community comply with all the substantial requirements of a statute, in order that no such burden may be recklessly or fraudulently imposed, yet such statutes are not of a criminal character, and proceedings are not to be so tech-

nically construed and limited as to make them a mere snare to those who are encouraged to invest in the securities of the municipality. These considerations are appropriate to this case. The proceedings on the part of the town and the railroad company *were carried on in evident good faith. No one questioned their validity; no effort was made to review the action of the county judge; the bonds were issued; more than $100,000 was spent within the limits of the town in the construction of the road; and years went by, during which the town paid the interest and part of the principal before any question was made as to their validity.* We think there is eminent wisdom and justice in the observations of the Court of appeals in the case of Calhoun vs. Millard, supra:

"*The town and the taxpayers permitted the bonds to be dealt with and taken by savings banks and others for nearly ten years, not only without, so far as appears, a word of warning or protest, but by affirmative acts of recognition, encouraged investment therein, as safe and valid securities. The bonds, resting on the adjudication of the county judge, were apparently valid.* * * * The denial of relief in this case may result practically in the enforcements of the bonds in question, and also of other town bonds issued and held under similar circumstances. *But in contrasting the relative conduct and situation of the town and the taxpayers, on the one side, and the purchasers of bonds, on the other, we cannot say that such a result will be repugnant to any principle of justice or equity.*"

Town of Andes v. Ely, 158 U. S., 312.

"The community at large must form their judgment of it from the acts and resolutions adopted by the authorities of the corporation and the *meeting of the stockholders, and by their acquiesence in them.*

These negotiable securities have been placed on sale in the community accompanied by these resolutions and votes, *inviting public confidence.* They have circulated without an effort on the part of the corporation or corporators to restrain them, or to disabuse those who were influenced by these apparently official acts. *Men have invested their money on the assurance they have afforded.*

A corporation, quite as much as an individual, is held to a careful adherence to *truth* in their dealings with mankind, and cannot, by their representations *or silence,* involve others in onerous engagements, and then defeat the circulations and claims *their own conduct had superinduced.*"

Zabriskie vs. The C. C. and C. R. Co., 23 How., 400-1.

The power is expressly given in our statute to a board of supervisors to establish the boundaries of an irrigation district, and submit the same to the voters as to whether they shall have a district. It is true the general power thus given is only to be exercised by the board on receiving a petition and notice, but the general power given to a municipality to issue bonds may be equally dependent upon an election of the people for the bonds, held upon proper notice. In such a case where it was claimed no notice of the election was given, this Court said:

"It is further to be said, that if there was, in fact, *any want of proper notice of the election,* the omission was only an irregularity in the exercise of an express power to issue the bonds, an irregularity in respect to a step forming part of preliminary conditions, and that the failure of the *municipality* and of the *taxpayers* to

enjoin the issue or use of the bonds, during the long period from the day of the election, September 13, 1869, until the bonds were registered in March, 1872, when they still belonged to and were in the hands of the company, *coupled with the annual payment by the county for ten years, of the interest on the bonds*, are sufficient grounds for holding that the municipality is *estopped* from defending on the ground of such non-compliance with a condition precedent as is set up in this case, *after* the bonds have been negotiated for value by the company. The record of the proceedings of the board shows that a tax was levied to pay the interest which fell due January 1, 1871, while the company still held the bonds."

Anderson County Commissioners vs. Beal, 113 U. S., 240.

"Perfect acquiescence in the decision and action of the board seems to have been manifested by the defendants until the demand was made for the payment of interest on the loan. So far as appears, they never attempted *to enjoin* the proceedings, but suffered the authority to be executed, the bonds to be issued, and to be delivered to the railroad company, *without interference or complaint.*

When the contract had been ratified and affirmed, and the bonds issued and delivered to the railroad company in exchange for the stock, *it was then too late* to call in question the fact determined by the common council, *and a fortiori is too late to raise that question in a case like the present, where it is shown that the plaintiffs are innocent holders for value.*"

Bissell vs. City of Jeffersonville, 24 Howard, 299.

The last case was where it was claimed that the bonds

were absolutely void for lack of jurisdiction, because three-fourths of the legal voters did not petition therefor.

"It should be observed that this contention was not made by appellant *prior* to the sale and delivery of the bonds to the Oakland Bank of Savings; but these questions are now presented as between the taxpayers of the City of Modesto and the holder of the bonds *after* their purchase, *and after the city has received the full purchase price.*"

Derby vs. City of Modesto, 104 Cal., 517.

"We suppose acquiescence or tacit assent to mean the neglect to promptly and actively condemn the unauthorized act, *and to seek judicial redress* from knowledge of the committal of it, where innocent third parties have been led to put themselves in a position from which they cannot be taken without loss."

Foster vs. Bearvalley Irrigation Co., 65 Fed., 846-7.

"To this condition of affairs, this company having a corporate name which the legislature had given it, *claiming* to be a legal corporation, and having, even if the articles of consolidation had been illegal, at least a *colorable* right to make such claim, controlling and building a railway *as an organized corporation*, and asserting the right to condemn land for its corporate purposes, *issues its bonds to the amount of seven hundred thousand dollars, and sends them on the markets of the world.* To secure their payment it issues a mortgage upon the road it claims to own, and is engaged in building, and in both bonds and mortgage *describes itself as a corporation* existing under the law

of Wisconsin and Illinois. The bonds go into circulation, and the money which had been received for them passes into the treasury of the company, *and is expended upon the construction of the road.* In process of time, the coupons upon the bonds are left unpaid, and the holders come and demand their money. To this demand the company replies that although it issued the bonds and mortgage as a corporation, and thus procured the money, *yet it was not a legally constituted corporation*, and therefore will *not* pay the money but *will* retain the road.

The doctrine of equitable estoppel has so often been expounded by the Courts that it needs neither definition nor the citation of authority. In our judgment, a clearer case than this for its application has rarely arisen. We are not saying that a corporation is estopped by its bonds and mortgage from raising the question as to whether, in making them, it was acting within its chartered powers. The question whether the mortgage now under consideration was within the power of the company to make, we shall presently consider. But we do say that where a company has issued its bonds and mortgage *under the circumstances above detailed*, the courts of every *civilized* country must hold it *estopped from denying its own corporate existence*, for such a defense is repugnant to every sentiment of justice and good faith. That this doctrine of equitable estoppel, or estoppel *in pais*, by which a person has represented to another the existence of a certain state of facts, and thereby induced him to act on the faith of their existence, is concluded from averring against such person and to his injury that such representations were false, is *as applicable to corporations as to natural persons*, will hardly be denied: Hall vs. Mutual Fire Ins. Co., 32 N. G., 297; and Zabriskie vs. Columbus, etc., R. R. Co., 23 How., 391."

Racine, etc., R. R. Co. vs. Loan, etc., Co., 49 Ill., 331.

We call the Court's particular attention to the above case because it is so applicable to the case at bar.

The two cases are on all fours with each other.

See also a very strong case by this Court recently decided:

Penn. Mut. Life Ins. Co. vs. City of Austin, 168 U. S., 685.

Assuming that the notice of the formation of the district was defective, yet it is apparent that nobody thought it was anything but in perfect legal form. Where parties practically construe a contract, it estops them from afterward changing that construction. Something of that same principle ought to be applicable here, for the parties have practically construed this notice as being legal and sufficient, and on that construction innocent parties have acted.

If they intended to dispute its validity, they should have done so then and there. Certainly they should have done so before third parties invested their money upon the strength of it.

If any taxpayer thought that the notice was illegal, still he might very well elect to be bound by the organization of the district. It was necessary for him then and there to elect either to be bound by the organization of the district, or to attack it, and he could not, for the purpose of the gain that it might be to

him, allow innocent purchasers to buy the bonds, with the proceeds of which he could build his water works, when he at all times had the secret intention in his heart that when he should receive these benefits, he would then attack the organization of the district, hold on to the benefits, and prevent the party he had thus misled from receiving back his money.

I use the word "misled" advisedly, in the light of the foregoing authorities, for he had not only kept silent when he knew this half million dollars would thereby flow into his lap from the innocent purchasers, but he had actively aided and assisted to bring about the fact that these innocent purchasers should buy the bonds, and part with their money, by paying the interest on the bonds as they were issued. For he must have known that for him to pay taxes to the district was for him to proclaim to the world that such district actually existed. Otherwise, why should he pay taxes to something that did not exist, and under tax levies made by something which was nothing? Is there any *statement* he could have made to the intended purchaser as to the validity of the district, anything he could have *said* in that regard that would have had half the convincing force that the payment of taxes by him would have? It is an old saying that "money talks louder than words," and however homely the saying may be, no one can gainsay its truth; and it is doubly true in a case like this.

IV.

The determination of the Board of Supervisors that

notice had been given is conclusive in favor of bona fide holders of bonds.

It is evident from the provisions of the statute that *some* one was to ascertain and determine that fact: otherwise why should the statute say the bonds should be "negotiable in form" or why should it say that the bonds should recite that they were issued "by authority" of that act? The idea of the statute clearly was that the holders of these bonds should not have their validity assailed. The intent was that the bonds should bring the highest possible price, and that to accomplish that result it was necessary for the purchaser of the bonds to believe them to be impregnable.

Assuming that the statute did not in so many words provide that the supervisors should determine that particular fact, yet if from the necessity of the case, it was necessary for them to do so, that is sufficient. *And, in favor of bona fide holders of bonds, their decision is conclusive.*

Town of Colma vs. Eaves, 92 U. S., 484.
Commissioners vs. Bolles, 94 U. S., 107.
Commissioners vs. January, 94 U. S., 202.
Oregon vs. Jennings, 119 U. S., 74, 92.
Bernard Township vs. Morrison, 133 U. S., 524, 528.
Miller vs Perris Irr. Dist, 99 Fed., 147-8.

But the Board of Supervisors were, even in *words*, directed to determine the fact whether notice was

given. The law provides that the petition signed by fifty or more taxpayers "shall be published * * * *together with a notice stating the time of the meeting at which the same will be presented.* When *such* petition" (that is a petition published *with such notice*) "is presented, the supervisors shall hear the same." The Board was therefore called upon to determine whether *such* a petition had been presented before they proceeded to hear the same.

Now they did determine that fact, and their determination thereof was entered on their records. Their records show as follows: "And the Board having fully heard the testimony and proofs * * * finds the *facts* to be as follows, to-wit: Said petition, together with a notice stating that said petition would be presented on Monday, the 1st day of July, 1889, was duly published," etc.

It will be observed that the Board used the same phraseology the statute did; the statute said the petition "together with a notice" etc., *shall* be published, and the Board found that the petition "together with a notice" etc., *was* published.

An innocent purchaser of the bonds was entirely justified in believing the word "notice" was used in the same sense and with the same breadth in meaning, in the finding as it was in the statute.

There is some criticism as to whether the finding should not have been more specific. Certainly the finding need not amplify the word used in the statute.

Besides, the finding is no more general than are

those which usually appear in the statement by boards, commissioners, or officers, as to the performance of the necessary prerequisites, *and which general statement fully protects bona fide purchasers of bonds.* A finding in most general terms that an election was had, is sufficient. Even where the bonds merely recited that they are issued "under the authority" or "by authority" or "in pursuance of" a statute, or general words of similar import, it is held to be a sufficient statement as to each prerequisite fact. No more detailed statement or finding as to any fact is required by the special board, commissioner, tribunal or officer, *in order to protect a bona fide purchaser of the bonds.* It is needless to cite authorities to this proposition, since this is the general recital or statement in the bonds in *all* the cases, where that subject is considered.

If this was not a case where the rights of innocent purchasers of bonds were concerned, it might then become a proper subject of inquiry as to whether a different rule should obtain.

V.

The recital in the bonds is conclusive of their validity in favor of bona fide holders thereof.

The bonds in suit recited that they were issued "by authority and in pursuance to" the statute.

The statute provided, as we have seen, that the bonds should be "negotiable in form" and should re-

cite that they were issued "by authority" of that act. How could they be issued by "*authority*" of that act unless there was a district acting under that law? That act was "authority" for the issuance of no bonds, except bonds issued *by irrigation districts.*

The recital covered the fact of the *legal existence* of a district as much as it did the *acts* of the district.

"In a proceeding brought for the purpose of determining the validity of an issue of bonds, one of the most vital questions arises upon the validity of the organization of the district contemplating the issuance of the bonds. *A valid organization of the district is a condition precedent to a valid issue*, and of necessity the validity of the organization must be considered and passed upon in a proceeding brought directly to test the validity of the bonds.

People vs. Linda Vista Irr. Dist., 128 Cal., 485.

Therefore when the bonds of a *bona fide* acting district, which district claims in good faith to be acting under the law, and its acting as such corporation is disputed by no one, but is acquiesced in by all, even its own taxpayers, who pay taxes to it under its levies, when the bonds of *such* a district recite they were issued by *authority* of that act, they necessarily recite that the district was legally organized under that act, since "a valid organization of the district is a condition precedent to a valid issue" of the bonds.

Now the rule is that where there is a valid law under which bonds *could* be legally issued, and the bonds recite that they were issued by "authority" of that law, the recital is conclusive in favor of *bona fide* holders

of such bonds, as to their validity and as to the due performance of every act to make them valid.

Commissioners vs. Bolles, 94 U. S., 108-9.
San Antonio vs. Mehaffy, 96 U. S., 314.
County of Macon vs. Shores, 97 U. S., 278-9.
See the cases partially collected in P. L. and T. Co. vs. Mercer County, 170 U. S., 593.

A few cases may be cited out of the scores of others to the same point that might be cited in addition to the above, to iliustrate the question, where want of notice, or deficiency of notice, was claimed. It is true the notice in such cases referred to an election, but, as has been observed under another point, the general powers given to a municipality to issue bonds upon an election of the people held upon notice, can no more be exercised without that election upon such notice, than can be the general power given to boards of supervisors to establish irrigation districts upon petition and notice thereof; and the recital will necessarily cover the one as well as the other, the one being no more jurisdictional than the other.

A statute provided that the officers of a town could issue bonds *if* authorized by a vote of the electors at an election to be held *upon notice to them of such election.* In fact the notice was not given, but the officers decided and certified that it *had* been, and thereupon issued and sold the bonds to innocent purchasers. In an action *by the bona fide purchasers* the Court held that the certificate of the officers that such notice *had* been given was conclusive evidence *in favor of bona fide holders of bonds.*

Town of Colma vs. Eaves, 92 U. S., 484.

In Indiana the statute provided that commissioners of a County could issue bonds *if* authorized so to do by a majority of the electors at an election to be held pursuant to a notice given *by the sheriff*. The sheriff never gave such a notice, but the commissioners recited that the bonds were issued "pursuant to the statute," which the Court held was an adjudication that a notice had been given *by the sheriff*, and refused to allow it to be proved that in fact there was no notice.

Knox County v. Aspinwall, 21 How., 539.

This authority is a leading one on this point, and stands as the law to-day.

See cases approving it collected in note in 98 Am. Dec, 687— 9.

In a case where the statute provided that an election might be held on a notice thereof given to the tax payers for thirty days, an election was held without a notice being given for that time. The officers, however, issued the bonds to a bona fide purchaser, reciting that they were issued in " pursuance of, and in accordance with the act of the legislature."

The Court held this recital to be a conclusive adjudication that there *had* been a notice of thirty days, and refused to let it be shown that such notice had not been given.

Humboldt Township v. Long, 92 U. S., 645.

In an action *in rem* against real estate, the sheriff recited that he had served the process as required by

law. Judgment and a sale followed to an innocent purchaser. As a matter of fact the summons had *not* been served, but the Court refused to let the owner show that fact as against the innocent purchaser who had bought on the faith of the sheriff's certificate of service and the Court's judgment thereon.

Reeve v. Kennedy, 43 Cal., 643.

See also McCauley v. Fulton, ~~42~~ 44 Cal., 361 and cases cited.

Riley v. Lancaster, 39 Cal., 354.
Eitel v. Foote, 39 Cal., 440.
Gregnon's Lessees v. Astor, 2 How., 319.
Walker v. Cronkite, 40 Fed., 133.
Sargent v. State Bank, 12 How., 371.
Tilton v. Cofield, 93 U. S., 163.
Simmons v. Saul, 138 U. S., 439 and cases collected.

When the statute required the bonds to recite that they were issued by *authority* of the statute, did it intend that the parties issuing the bonds should recite the truth or a lie? If it intended them to recite the truth, did it not necessarily give those persons the *power*, nay, more, did it not make it their *duty* to first ascertain and determine whether the bonds were or were not issued by the *authority* of the law? In other words, did the law not require them to ascertain and determine whether the law *authorized* them to be issued? And in determining whether the law *authorized* their issuance, were they not met at the very threshold

with the question of whether all the necessary acts had been done to form a district under that law, since without a valid district, the law did not *authorize* the issuance of the bonds? Have we not, then, not only the finding and decision of the Board of Supervisors, but also the finding and decision of the parties issuing the bonds that all the acts necessary to be done in order to create a valid district *were* done? And we have seen that either of such decisions is conclusive in favor of a bona fide purchaser of such bonds.

VI.

While it is not necessary to this case, the Court's attention is nevertheless called to the fact that the notice of the hearing of the petition was sufficient.

When these bonds were purchased by plaintiff and his assignors they (and the bonds of other districts having similar notice) were regarded and treated as being valid securities by the districts themselves, by the taxpayers of those districts, by the public, by the legal profession, and by the Courts. No objection was made to them by the Courts on account of the notice not being signed, although the fact that the notice was not signed, appeared in the transcript, as will be seen by examining the same, in several of the cases where the validity of the district and of the bonds was in question, even in the earlier cases.

Central Irr. Dist. vs. De Lappe, 79 Cal., 351 (decided in 1889).

Modesto Irr. Dist. vs. Tregea, 88 Cal., 334 (March 1891.)

While the point was not raised in these earlier cases, yet the point was then plainly apparent to both Court and counsel, and was raised by the record. While it might not be *res adjudicata* on that point, as the Court in the second appeal of the Central Irr. Dist. (117 Cal., 382.) held it was not, still as a justification for these purchasers to buy, regardless of this point, it might well be held to justly fall within the doctrine of the case of Gelpcke vs. City of Dubuque, 1 Wall., 175, which decision is to the effect that a purchaser of negotiable bonds can rely on the law as it was treated by the State Court previous to his purchase. Certainly, and in any event, when this Court shall come to determine what was absolutely required to be a valid notice, it can very well say that these notices were valid and that the purchaser was justified in believing them to be valid, when the districts, taxpayers, public, Courts, and counsel all *assumed* them to be perfectly legal. In such a case this Court said:

"In the case at bar the statutes of the State of South Carolina, under which the bonds were issued, were passed in 1882 and 1885. The bonds were issued in behalf of the township and were purchased by the plaintiff, in 1886. It is alleged in the complaint and admitted by the demurrer that he purchased the bonds, relying upon their being legal and valid obligations of the township, and that at the times of their issue and purchase these bonds and like bonds of other townships were regarded and treated as valid securities by the corporate authorities of the township, by the public, by the legal profession, and by the legislative, executive, and judicial departments of the State. And the decisions of the Supreme Court of the State during the same period appear to have

assumed the validity of such bonds. Chamblee vs. Tribble and Railway Co. vs. Tribble, above cited."

Folsom vs. Township Ninety-six, ~~154~~ 159 U. S., 611.

This Court, under those circumstances, held the statute should be construed in favor of the bonds, notwithstanding the State had theretofore, but subsequent to the issue of the bonds, construed the law so as to invalidate them.

If a taxpayer saw this petition being published, and saw it published "together with" a notice of the time of the meeting, would not this give him full and fair notice of the time of the meeting unless he was an idiot?

The statute fully protected the parties interested by providing that the petition and notice should be published "*together*;" that the petitition should be pub lished "*with*" the notice. Such was the construction placed by the author of the law upon its requirements, as shown by the record in the case of Board of Directors of the Modesto Irrigation District v. Tregea 88 Cal, 334, (same record in Tregea v. Board of Directors, on writ of error to this Court, 164 U. S. 179,) for that was the very first district organized in the State, and he organized it so far as preparing the legal papers was concerned. He informs me that there was only *one* district organized in this State under a *signed* notice (the Madera District), and that district never issued any bonds, having disincorporated before doing so.

This construction, as to what a valid notice should be, as we have seen, was not only adopted by every existing district in the State in the *organization*, but that construction was also given the law by everybody, even the taxpayers, who never had even a doubt as to their having had *legal* notice. It would seem that a notice *which had served its purpose so well*, that gave so much notice that even the adverse parties thought it was a good notice, could well be considered such a notice, as gave them their day in Court, and was a good enough notice to prevent it being said that those parties have been deprived of their property without due process of law for want of a notice. If it was a good enough notice to have *actually accomplished* the whole object of the statute in requiring a notice at all, it certainly is good enough to be held to be a *valid* notice.

It is to be observed that the Supreme Court of California, in the Central Irrigation District case (117 Cal.. 382) did not say that it was not a good enough notice *as to such bonds in the hands of innocent purchasers*. It expressly reserved that question. In fact, its intimation was that such bonds would be *good*. The Court in that connection said:

"The bonds are negotiable: public corporations are estopped from setting up many defences of *irregularity*" (evidently considering the defect as an *irregularity merely*) "against the innocent holders of such negotiable securities."

In re Central Irr. Dist. 117 Cal., 400.

It is further to be observed, that while in that case, it was held by the Court (by a bare majority) that the notice ought to be signed, yet the notice there under consideration was in some respect different from the notice here.

There the notice read as follows:

The foregoing petition will be presented to the Honorable Board of Supervisors of Colusa County, on Monday Oct. 10, 1887, at 10 o'clock A. M., of that day."

The notice in this case reads somewhat differently, the material difference being indicated by the portions italicized below:

"*Pursuant to the statute in such case made and provided*, notice is hereby given, that the above and foregoing petition, will be presented to the Board of Supervisors, in and for the County of Tulare, at their first monthly meeting in July 1889, to wit, on Monday, the 1st day of July, 1889, *at which time any person or persons, desiring so to do, may present their objections, if any they have, why said petition should not be granted.*"

It was stipulated that this notice and the petition were published "*together*," that the notice was published "*with*" the petition, that both were published in the same type and that they were published "together" by being segregated from the rest of the printed matter in the newspaper, by black lines across the column, the first black line across the column *at the beginning of the petition* and the other black line across the column *at the end of the notice.*

Attention is called to the differences in the two notices because it entirely dispels at least one of the Court's arguments that the notice read like a "bit of news," and might have been inserted by the "editor" as such.

Central Irr. Dist. 117 Cal., 392.

A "bit of news" does not commence with such words as "pursuant to the statute in such case made and provided," nor does it end with such words "at which time any person or persons desiring so to do may present their objections, if any they have, why said petition should not be granted." Nor is a "bit of news" so arranged by segregating black lines across the column as to make it appear to be virtually a part of another document, to which it appropriately refers.

Another thing to be considered in this connection is that this is not a case where there is an absence of *all* notice, but a case where at most all that can be said against it is that there is a mere irregularity in a notice actually given, which has misled no one and which has operated *in the actual accomplishment in giving notice* as fully and as effectually as a notice without such irregularity could possibly have done. This will be more fully stated in the next point.

In such a case how can it be said that any person has been deprived of his property without due process of law?

The statute should receive a liberal construction *in favor of innocent purchasers of negotiable paper.* In

such a case the Supreme Court of California laid down this rule for its guidance quoting the same from Dillon on Municipal Corporations, when that learned author was speaking of the Supreme Court of the United States:

"It has rejected, when necessary to protect the *bona fide* holders of such securities, narrow and rigid constructions of statutes authorizing the creation of such debts.'"

Derby vs. City of Modesto, 104 Cal., 518.

And the Supreme Court of California announced in that case that it adopted that rule for its guidance *when the rights of bona fide purchasers were in question*, and hence a notice like this, which has actually given *and is fitted* to actually give notice, should be held sufficient.

It is also to be noted that not only has the Supreme Court of California in all its earlier cases treated these notices as good notices, but they were treated as good notices by *this* Court in two recent cases.

In the case of Tregea vs. Modesto Irrigation District, 164 U. S., 179, the notice was set out in the record, and was before this Court. It reads:

"Notice is hereby given that the above petition will be presented to the Board of Supervisors at their regular meeting on Wednesday, May 11, 1897, at 11 o'clock A. M."

If this was not sufficient notice in the opinion of the Court it would doubtless have disposed of the

case on that ground, for that case was on a direct attack; certainly Justices Harlan, Gray and Brown thought the notice good for they were in favor of affirming the judgment of the Court below on the merits. Cotemporaneously with the decision in that case a decision was rendered by the same Court in the case of Fallbrook Irrigation District vs. Bradley, 164 U. S., 112, wherein the question of notice was a predominating question. The judgment was reversed in the latter case, upon the ground that the notice *had* been given. The notice in the Fallbrook case was not signed either. This Court must have held that notice to be good. I assume it was before the Court, of course, or it could not have held the notice to be good and reversed the case. The record, however, is not accessible at this moment.

In that case, the notice preceded the petition, but the notice and petition were published "together" and the petition was published "with" the notice. The notice, as I am informed, from records in this State, reads as follows:

"Notice. Public notice is hereby given that at a regular meeting of the Board of Supervisors of the county of San Diege, State of California, to be held on the second day of February, 1891, at ten o'clock A.M., at the Court House, in the City of San Diego, in said county, there will be presented to the said board a petition for the organization of the Fallbrook Irrigation District, which said petition is in the words and figures following, to-wit:"

I am informed that immediately following the notice the petition was published, including the signa-

ture thereto, but no signature appeared other than the signature to the *petition.*

The notice was not signed either before the beginning of the petition or after its end.

VII.

There is a difference between a case where no notice at all is given, and a case where some notice is given, though not what the statute requires. Very different results follow in the one case from those that follow in the other.

As already shown, the notice that was actually given in this case, assuming it to have been defective, was nevertheless *effective*, as much so, as though there had been no defect whatever.

Now let us assume that there was no question involved here as to innocent purchaser of commercial paper. Let us assume it was simply a question between the district on the one side and the tax payers on the other. Nevertheless, the Board of Supervisors had full jurisdiction of the subject matter of establishing irrigation districts. So had a Board of Commissioners in Indiana full jurisdiction of the subject matter of establishing drainage districts. The Indiana statute required that before the Board of Commissioners could establish a district, a petition of a given number of the land owners thereof, had to be signed, and a notice of the hearing of such petition before the commissioners was to be published for four weeks. As a

matter of fact, in one of the cases where the petition was signed, the notice was not given in accordance with the statute, that is to say, it was given for less time than four weeks.

The ditch was built and thereupon an assessment was levied by the Board of Commissioners for its payment. One of the tax payers objected on the ground, that the district had never been legally formed, by reason of the notice of the hearing of the petition for the formation of the district not having been given as required by law.

Upon this proposition the Supreme Court of Indiana decided as follows:

"It affirmatively appears from the complaint, that the notice was published for twenty-seven days, one day less than the time required by the statute. The act of 1875 requires that notice of the pendency of the petition shall be published for four consecutive weeks, and appellant is correct in his contention that the notice is defective, although lacking only one day of the prescribed time. It is undoubtedly true that, where the statute commands that notice shall be given for a definite time, a notice published for a shorter period is defective, although it fall very little short of the time designated. The difficulty in the case in hand is not in determining whether the notice was such as the statute requires, that is plain enough, but the difficulty is in determining whether the defect in the notice rendered the whole proceedings void. If they were void they are vulnerable upon a collateral attack; if not void, but merely irregular or erroneous, then they can not be overthrown by such an attack.

The difficult question is: Did the defect in the no-

tice render the proceedings void? The board of commissioners had jurisdiction of the subject matter" (so did the board of supervisors have jurisdiction of the subject matter of establishing irrigation districts),"and there was *some* notice, but not *such* a notice as the statute requires. *It is important to keep in mind the fact that there was some notice, although a defective one.* It will not do to assume that there was no notice *at all*, for the reverse is true. It is also true that the commissioners had authority to determine whether they had acquired jurisdiction; *this we think would be so independently of any express statutory provision*; but there is here an express provision requiring the commissioners to determine all preliminary questions. Section 4 of the act provides that 'Said board of commissioners, at the time set for the hearing of said petition, shall, if they find the provisions of the second section of this act to have been complied with, proceed to hear said petition.' The second section contains, among others, provision as to what notice shall be given, and the board must, therefore, in all cases, determine whether the requirement of the statute, concerning notice, had been complied with before entering upon the hearing of the petition. All questions respecting the sufficiency of the notice are thus expressly submitted to the judgment and decision of the board. Whether there was or was not notice, was, of course, a jurisdictional question, and this question having been considered and determined by the commissioners' court, that decision cannot be subjected to review or overthrow by a collateral attack, such as the present. The Board, etc., v. Hall, 70 Ind., 469; Brocaw v. The Board, etc., 73 Ind., 543.

The complaint affirmatively shows that notice was published, but not for the full time required by statute. There was, therefore, a jurisdictional question presented for decision, and upon it a decision was made.

There is a clear distinction between cases in which there is ***no notice whatever***, and those in which there is merely a ***defective*** or ***irregular*** notice. The general rule upon this subject, deducible from the authorities, may be thus stated: If a court, having jurisdiction of the ***subject matter***, and required to determine all jurisdictional questions, either expressly ***or impliedly***, adjudges that notice ***was*** given, its decision will repel a ***collateral attack***, unless the record of the court ***affirmatively*** shows that no notice was given; ***and this is so although the record shows a defective and irregular notice.*** Isaacs v. Price, 2 Dillon. C C., 347; Harrington v. Woffard, 46 Miss., 31; Ballinger v. Tarbell, 16 Iowa, 491; Cooper v. Sunderland, 3 Iowa, 114; Thompson v. Tolmie, 2 Pet., 157."

Muncey vs. Joest, Treasurer, et al., 74 Ind., 411-413.

If the law laid down in the above case and in the authorities therein cited is good law, and it is submitted that beyond all question it *is* good law, how much more should it be applied in a case where the rights of ***bona fide*** purchasers of negotiable paper are involved, and especially where the taxpayers and the district, by silence and also by affirmative action in paying taxes and therewith paying the interest on those bonds, have induced the purchase of those bonds by the innocent purchasers.

VIII.

The decree of confirmation settled the proposition as against the world that this district was legally organized. Such decree does not deprive the land owners of their property without due process of law.

The object of this law has already been stated. It was to settle, once and for all, the question as to the validity of the bonds that were to be issued. It has already been stated that capital is timid. In order to get the best possible price for these bonds there must be no question concerning their validity.

"Capitalists could not be expected to accept such paper and advance money for it, *unless the authority to issue it was put beyond dispute.*"

Bissell vs. City of Jeffersonville, 24 Howard, 298.

Such being the stubborn fact of the case, the legislature and the people of this State were confronted with the problem as to what plan could be devised and what proceeding could be instituted which, in the language just quoted would "put beyond dispute" the authority to issue the bonds.

It is true that the Supreme Court of the United States had, in numerous cases, stated that it was within the province of the law to authorize some person, such as an auditor, commissioner, or other officer, "to examine the proceedings and make his certificate of legality *conclusive* evidence thereof" or that it might "permit the district to appeal to the Court for a like determination."

Tregea vs. Modesto Irrigation District, 164 U. S., 179.

These certificates were *ex parte*, but nevertheless, as we have seen, would bind the taxpayers of the dis-

trict, even in cases where they recited an election had been held which in fact had never taken place; but the legislature of California determined to provide a proceeding where everyone would have a chance to be heard upon that proposition. In consequence the act of 1889, referred to in the last named case, was passed by the legislature of California. In the Tregea case, it was stated that if the Court was appealed to, the proceeding was simply to secure evidence. It is true it said that *such* evidence would be *conclusive* evidence of the fact; so that, whether this proceeding is to be considered as a mere matter of conclusive evidence or as a decree *in rem* would seem to cut no figure.

The Supreme Court of California, however, (even since that decision) has invariably held the proceedings to be *in rem*, and to such an extent has this been held that, in the most recent expressions of the Court, it was determined that the proceeding bound the *State* as well as any private individual. In fact, we have already seen that, so far as the point raised in this case is concerned, as to the legal organization of the district, that fact was already determined as to private individuals, by reason of the district being a *de facto* corporation.

People vs. Linda Vista Irrigation District, 128 Cal., 485.

As we have just said the Supreme Court of California has always held, even since the Tregea case was decided in this Court, that these confirmation pro-

ceedings were proceedings *in rem*.

People vs. Linda Vista Irrigation District, 128 Cal., 377.477

People vs. Perris Irrigation District, 132 Cal., 289, 292.

The last case appears in the very last volume of the California reports, and it was decided in March, 1901.

Both the last named cases are *quo warranto* cases, and it was there held that the decree of confirmation bound the *State* as well as the rest of the world and hence *quo warranto* would not lie for the very alleged defect that is claimed in this case, namely, that the notice was not signed.

It would be extraordinary indeed, and a travesty upon justice, if the existence of these corporations could not be questioned by *quo warranto* by the *State*, and yet could be declared void in a collateral suit at the instance of any *private* party who might chose to make the attack.

The chief objection of counsel to the validity of the decree of confirmation is that it would be depriving the land owner of his property without due process of law, because no process was served upon him *personally* but only by publication. The complete answer to that proposition is fully demonstrated, where that very point was raised in the Supreme Court of California.

"Nor is it *pretended* that the appellant did not have

notice of the confirmation proceedings or that he was in any way or for any reason prevented from appearing therein and raising all the objections which he now seeks to raise."

(The notice in that case was not signed, and it will be observed that what I have been urging is true, namely, that at that time, which was in 1890, no one dreamed of thinking these notices were not entirely legal)

"The contention is simply that no process issued in those proceedings was served on him *personally*, and hence that he was not obliged to appear and his rights are not barred by the judgment, but he is at liberty now to make any attack upon the proceedings for the issue of the bonds, *including the proceedings for the organization of the district* that he could have made, had there been no judgment or confirmation. To hold otherwise, it is claimed, would have the effect of depriving him of his property without due process of law."

Crall vs. Poso Irrigation Distaict, 87 Cal., 146.

The Court will see, therefore, that the question was squarely before the Supreme Court of the State of California.

In a most masterly opinion, which amounts to absolute demonstration, the Court then proceeded to demonstrate that a published notice is sufficient process of law. As there pointed out, millions of dollars are determined by probate proceedings which depend exclusively upon *published* notices. Street assessments, insolvency proceedings, tax proceedings and many other analogous cases were referred to where published notice alone was given.

It is astonishing to me that the case referred to so much by counsel's brief, did not convince him that there can be nothing in this point. It is conceded that, if the notice of the hearing of the petition to the Supervisors *for organization* had been *signed*, then this district would have been legally organized, and there would have been no need of a decree of confirmation. Yet that notice was not a process served upon each land owner individually, *but was published only*. The Supreme Court of the United States held that *such* a notice *was due process of law*.

Fallbrook Irrigation District vs. Bradley, 164, U. S., 112.

The effect of a *published* notice of the petition for *organization* would be, according to the theory of counsel, and of that decision, to render the lands of the taxpayer liable for the payment of whatever taxes might be necessary to pay any indebtedness that should be incurred by the district thereby organized; such *published* notice of the *organization* proceedings would give each land owner his day in Court, as to every question that has been suggested by counsel, or which could be suggested by him. He concedes, and the Fallbrook case decides that all those questions would have been settled once and forever, by his having had due process of law by reason of such *published* notice, always supposing that notice to be in accordance with the requirements of the statute. How, then, can counsel claim, with both the authorities of the State and the United States staring him in the face, that the *published* notice of these *confirmation* proceedings

is depriving his clients of their property without due process of law, when those authorities, both State and Federal, conclusively establish the proposition that a *published* notice in the *organization* proceedings would finally and forever make his land liable for these bonds and would settle every question against him which he now makes?

Counsel further objects that it is impossible for one to have his rights recited away upon jurisdictional facts. But under point V of this brief we have shown, by the citation of many authorities (and many more might be cited), that that point is not tenable where the rights of a *bona fide* purchaser have accrued on the faith of that recital.

Notices of an election are as essential to the protection of a tax payer as are notices of the presentation of a petition for the organization of the district. Yet, in favor of a *bona fide* purchaser, a certificate that an election had been held will protect the innocent purchaser of those bonds, even if that recital be false. Even where an officer makes a false recital of service of summons, and judgment is entered thereon, the title of an *innocent purchaser* under that judgment cannot be disturbed, by showing that there was, in fact, no service. This is shown in the case of Reeve vs. Kennedy, and many other cases cited under said point V, including cases in this Court.

In fact, this rule has never been doubted in a single case which had fallen under my observation.

Counsel's further objection that these confirmation

proceedings are not proceedings *in rem* is fully answered by the decision of the Supreme Court of California.

People vs. Linda Vista Irrigation District, 128 Cal. 477, and cases cited.

People vs. Perris Irrigation Dist., 132 Cal., 292.

Nor can I appreciate the reasoning of counsel why this is not a proper subject for a proceeding *in rem*. The statute contemplated that the proceedings would deal with large bodies of land, the owners of some of the respective parcels of which would or might be in doubt or unknown. These districts generally have several hundred owners or claimants, each of a separate parcel. This district had over four hundred, as shown by the vote on organization. Yet to make such a decree effectual, to accomplish the purpose for which it was intended, it must bind *every foot* of land within the district. In such a case it is eminently proper that the proceeding should be *in rem* to determine the status of this body of land and bind everyone who claimed any part of it. No *practical* proceeding could be imagined, or devised, which would accomplish the purposes intended, except a proceeding *in rem*.

But as has been observed, whether the culmination of these proceedings is a judicial decree or only conclusive evidence, amounts to no practical difference. The result is practically the same.

The objection made by counsel that the confirmation proceedings are also objectionable to the Fourteenth Amendment of the Constitution of the United States, on the ground of discriminating legislation, has no force. The discrimination was not arbitrary, but was an actual necessity. It was based upon the natural differences that existed betweeen these districts and any other organizations in the State. The object of the law, as stated by the Supreme Court in many cases, was that the validity of the organization of those districts and the proceedings thereunder should be settled, in order that their bonds should bring the highest possible price.

"It is a matter of every day observation that bonds bearing such a rate of interest, and about whose validity and payment at maturity there is no question, can be readily sold for considerably more than their face value, while bonds which are liable to be assailed and questioned, years after their issue, by anyone who is required to contribute to their payment, are reluctantly taken at any price. It was doubtless for the purpose of settling all these matters in advance, and thereby making the bonds of irrigation districts more readily salable, and at better prices than they would otherwise command, that the legislature passed the confirmation act, providing that the districts might, before offering any of their bonds for sale, have all questions affecting their validity judicially and finally determined."

Crall vs. Poso Irrigation District, 87 Cal., 145-6.

Now, if there was any other organization in the State of California organized under such a law as

these irrigation districts were organized under, or that needed its proceedings or its bonds to be examined, determined and confirmed, it has not been mentioned or pointed out; and I am aware of none. If there be none, then that there is a valid distinction for this law, not an *arbitrary* classification merely, is beyond question.

The objection to the decree of confirmation on the ground that notice therein was not properly made, is untenable. The statute says:

"The Court shall *find* and *determine* whether the notice of the filing of said petition has been duly given and published for the time, and in the manner in this act prescribed."

This requirement was not for an idle and useless purpose. It was evidently meant to *conclude* that matter. It was evidently intended by the statute, that such a finding and determination should *establish* that the required notice had been given. Acting in pursuance of this requirement of the statute, the Court did proceed to find and determine whether or not there had been such notice given. Now it is manifest that before the Court could put in written words, that it "found" the fact to exist, it must first "determine" that such fact did exist. Without such determination being first made, that the fact did exist, how could it be "found" to exist?

But the Court states in so many words, both in its findings and in its decree, that such notice had been given.

The criticism that the record showed that Oakford posted the notices, and that he was not the clerk, is not entitled to any consideration. The clerk gives the notice when it is signed by him and is posted and published by anyone with his assent, no difference by whom. Is it contended that the clerk did not publish the notice (for he must *publish* as well as *post*) because he did not own the newspaper that published it? It is not expected that the clerk go in person all over the district, posting notices, any more than it is for him to own a newspaper in which to publish it. The law requires him to remain in his office to attend to his duties there. He may be sick, and could not go if he wanted to. Oakford's affidavit, if it had any place in the record at all, (which it had not, Sargent in Bank, 12 How.,384–5, England vs. Gebhardt 112 U.S. 505,), does not in any way contradict the finding and determination of the Court, that the notice was given as required by law. Oakford may have posted the notice at the request or with the assent of the clerk, as much as the newspaper published the same at his request or with his assent. He certainly does not say that he did not, and all intendments are in favor of the judgment, even if the Court was acting with limited power in this proceeding, as claimed by counsel.

Estate of Twombly, 120 Cal., 351.

There is no particular kind of evidence, as to being written or oral, which the Court must act upon in making its determination and finding. Oakford may have been *sworn on the hearing and testified orally* that he posted the notices *at the request of the clerk. On that*

oral evidence, the Court may have reached its determination, and made its finding. It will not (because it cannot) be denied that the *minutes do* show that Oakford, the clerk of the Court, and others, *were sworn and testified on the hearing.* Be that as it may, *the finding and determination of the Court* that notice was duly given, was intended to be and is binding and conclusive in favor of *bona fide* purchasers of bonds.

"Where the jurisdiction of even an inferior Court is dependant on a *fact* which the Court is required to ascertain and settle by its decision, such decision is held conclusive."

Farmers' Bank v. Board, 97 Cal., 328.

People v. Reclamation District, 121 Cal., 525.

IX.

The second judgment entered in the confirmation proceedings eight years after the confirmation decree had become final, cuts no figure as against bona fide purchasers of bonds.

The Court is respectfully referred to the statement of the case at the beginning of this brief for the facts as to the general decree.

The opinion of the Court in the last alleged proceeding *(offered in evidence by the plaintiffs in error themselves)* reads as follows:

"Heretofore a decree of confirmation in such proceedings has been made and entered herein and subsequent to such decree being entered, on complaint of

Jauchius and others, such decree was vacated and set aside. That matter was presented to the Court on demurrer to complaint, which demurrer was submitted to the Court *without argument* and *at once* overruled, in accordance with a well established *rule* of this Court to overrule all demurrers that are submitted without argument.

No answer was made to the complaint and the petitioners took the relief asked for *by default* and the decree of confirmation was set aside by the order of the Court."

It is submitted to the Court whether such procedure *as recited by the judge himself*, does not justify the remarks made in a case in the House of Lords, the highest Court in England, and quoted by a leading authority on judgments in this country, namely:

"But to create an estoppel it is essentially necessary there be a genuine and honest judgment. It must not be merely collusive or simulated. A judgment or sentence, we are told, is a judicial determination of a case agitated between *real* parties upon which a *real* interest has been settled. In order to make a sentence there must be a real *interest*, a real *argument*, a real *prosecution*, a real *defense*, a real *decision*.

In all these requisites, not one takes place in case of a fraudulent or collusive suit. There is no judge; but a person invested with the insignia of a judicial office is misemployed in listening to a fictitious cause proposed to him. There is no party *litigating*; there is no party defendant; no real interest brought into question."

Earl of Brandon vs. Becher, 3 Cl. & F., 510.

2 Black Judgments, sec. 508.

The cases cited by the counsel to the effect that a second decree in a case would be taken to be valid in the absence of a contrary showing, were all cases where the first decree had not become final when the second decree was entered.

In California the statute reads as follows:

"An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied."

Code of Civil Procedure, Sec. 1049.

See also Peeney vs. Hinckley, 66 Pac. Rep., 580.

The time for appeal in California from ordinary judgments is one year.

When a decree *becomes final*, however, as was the case here, the Court has no power to set aside a judgment. The case then falls within the rule laid down in a late case decided by the Supreme Court of California, which reads as follows:

"When a judgment is once entered of record, it must stand as the judgment until it is vacated, modified or disposed of by some means provided by law: *entering additional judgment entries is not one of them.*"

Estate of Mitchell, 126 Cal., 250.

The second judgment was therefore a mere nullity.

Even if it were not, it could not affect existing *bona fide* purchasers.

Hutchinson vs. Burr, 12 Cal., 103.

Patterson vs. Yuba Co., 12 Cal., 105.

Brown vs. Trousdale, 138 U. S., 389.

Carroll vs. Smith, 111 U. S., 562.

Tregea vs. Irr. Dist. 164 U. S., 179.

Herring vs. Modesto Irr. Dist., 95 Fed., 722.

Miller vs. Perris Irr. Dist., 99 Fed., 143, 150.

Thompson vs. Sampson, 64 Cal., 330.

The first judgment is still in full force as to existing *bona fide* purchasers, as they were not made parties to any action to set it aside.

New Orleans Water Works Co. vs. New Orleans, 164 U. S., 471.

Patterson vs. Supervisors, 12 Cal., 106.

Cattle Co. v. Frank, 148 U. S., ~~604~~ 603

Consolidated Water Co. v. Babcock, 76 Fed., 252.

Consolidated Water Co. v. Babcock 93 Fed., 849.

Hassel v. Wilcox, 130 U. S., 503.

Louisville Trust Co. v. Cincinnati, 76 Fed., 298–9.

People v. Temple, 103 Cal., 453.

Stallcup v. City of Tacoma, 42 Pac. Rep., 544–5.

Hoppock v. Chambers, 56 N. W., 86.

X.

The two years statute of limitations in which a district could be attacked is a bar to any attack now made.

The statutes of California, 1891, page 144, which is an amendment of the Wright law, provided as follows:

"And no action shall be commenced or maintained or defense made affecting the validity of the organization, unless the same shall have been commenced or made within two years after making and entering of said order."

The constitutionality of this Act is attacked by the counsel. I cannot understand wherein it is unconstitutional. The statute of limitations varies with reference to almost everything dealt with, and certainly the matter is entirely within the discretion of the legislature.

It is claimed that because the defendants are in possession of all their rights concerning their lands, therefore, they cannot constitutionally be called upon to do anything. But it was held by the Supreme Court of the United States that a law of Congress was perfectly valid that called upon all claimants of Mexican grants to present their claims to the land commissioners within three years after the passage of a Congressional act, requiring them to do so, or forfeit their lands: and this, too, even though the title was already perfect.

Botiller v. Dominques, 130 U. S., 238, 52.

That was not as strong a case as this, because there

the claimant of the land was enjoying the land in full without paying anything to anybody; but in this case a man can hardly be said to be in the full possession of all his rights as to his lands when he is paying the district its levies of taxes upon them. All that is asked is that he *continue* to pay the very levies that he was paying during those two years.

There is another theory on which this limitation law may well rest. It was determined in the Fallbrook case that the legislature *could itself* have organized the district without any notice to anyone. It is true that in that case it would be presumed to have taken *evidence*; but it might well be said that it has taken evidence when, for two years, people acquiesced in the validity of the district and its proper organization by paying taxes levied by that district. What better evidence could the legislature take that lands were properly includible in a district, when the owners of those lands, for two years, paid the taxes which were levied by the district upon them, without making any attack upon the district itself? May not, therefore, it be well said that the legislature was satisfied that the fact that no attack upon the district had been made for two years (by those who were meeting its burdens), was sufficient evidence on which it could act to *ratify* those districts, which it might have created in the first instance without notice, and upon no stronger or more convincing evidence?

In this veiw of the case, this statute becomes a *ratification* of the organization of these districts; and the evidence under which the legislature acts in thus rati-

fying those organizations, is the fact that the owners of the land have submitted, without action or attack upon the district, to the burden of paying the taxes levied by the district upon them.

But, if possible, a still more conclusive ground on which the statute can rest, is the fact that, as seen by the authorities cited in former points of this brief, a tax payer must not rest supine, but must resort to judicial redress when he sees his property about to be subjected to burdens of taxation for the payment of claims being created illegally, *when the rights of innocent purchasers are about to intervene.* The authorities do not state the precise time in which a taxpayer must seek "judicial redress" to restrain or nullify the threatened acts. Many of them, as will be seen, use the expression that he must seek such redress "promptly." It is entirely within the power of the legislature to fix a precise limit as to the time in which the party must seek his judicial redress as against irrigation districts. The statute, in its wisdom, stated that such redress must be sought, and sought for within two years, or not doing so, that fact should be deemed an acquiescence in the existence of the district by the taxpayers therein.

The act, as to the two years limitation, was fully upheld in the Circuit Court of the United States for California.

Miller vs. Perris Irr. Dist., 85 Fed., 702.

Herring vs. Modesto Irr. Dist. 95 Fed., 721–2.

XI.

The two years statute of limitations was not affected by the Bridgeford Bill, so called.

The Bridgeford Bill (statutes of 1897, p. 254) is not inconsistent with the two years statute of limitations in statutes of 1891, p. 144, for it has no provision on the subject of limitation whatever, and therefore, cannot be deemed to have taken the place of such provision in the previous law. Besides, it, by clear assumption, keeps that provision in force, for it says that the previous laws are only repealed "*so far* as they may be *inconsistent* herewith." This clearly assumes that there is *something* in those previous laws that is *not* repealed; and that something is expressly stated to be that part of them which is not *inconsistent* with the law. The two year limitation is in no way inconsistent with the last law, it having no provision whatever on that subject, and hence is still in force.

Besides, limitation laws, when once fully run, become part of the right, and their repeal does not open up the time for litigating these rights, where these rights exist *in property*, as they do in these bonds.

Peiser vs. Griffin, 125 Cal., 9.

Board vs. Blodgett, 40 N. E., 1026–7.

Campbell vs. Holt, 115 U. S., 623.

In fact, this law was something more than a statute of limitations. When the State said to intending purchasers of bonds, "The organization of the district,

whose bonds you may buy, shall not be attacked after two years, after that time they shall be unassailable and the district sold its bonds while this law was in force, *the law became a part of the contract itself*, and its repeal could no more affect the contract of which it was a part, than would the repeal of the whole statute authorizing the formation of the district.

Walker vs. Whitehead 16 Wall, 314.

Barnitz vs. Beverly, 163 U. S., [illegible]

Allen vs. Allen, 95 Cal., 197.

Moreover, as pointed out by Judge Morrow, section 9 of the Bridgeford bill expressly saves this provision.

Herring v. Modesto Irr. Dist., 95 Fed., 722.

XII.

And finally,

We have here a case where there is a valid law under which corporations organized thereunder *can* issue bonds. We have a case where the Tulare Irrigation District purported to organize under that law. and which, for many years after its organization acted in the best of faith as though a legal corporation, to the very fullest extent, issuing bonds, levying and collecting taxes, paying the interest promptly on its bonds, building canals, irrigating lands in the district, litigating as a corporation in the Courts, being there recognized as a corporation, in fact doing every possible act which a legal corporation could do; all this with-

out a question or objection from anyone, as to the entire validity of the corporation and its bonds. Nay, more: We have a solemn decree of confirmation by a Court of competent jurisdiction declaring both corporation and bonds to be entirely legal. And still more: We have a law that requires the bonds to be negotiable in form and to "express on their face that they were issued by *authority* of this act," the effect of which recital under the numerous decisions of the Supreme Court of the United States was then well known to the legislature to be to make them, when in the hands of innocent purchasers, unassailable as to any claim that could be made that any prior act necessary to their entire validity had not been performed; and the legislature, knowing that this recital would have this effect, must, from the fact of requiring it to be inserted, have intended it to have that effect.

Notwithstanding all this, the learned counsel insists that the district and its taxpayers are entitled to examine every i to see if it is dotted and every t to see if it is crossed.

Is it too much to claim that this district and its taxpayers shall not thus obtain our money, enjoy the property they have purchased with it, and not pay the bonds which they sold us, and which we purchased in the utmost good faith.

We earnestly submit that this case should be affirmed upon each of the points hereinbefore stated; and we further submit with equal earnestness, that, if the principles for which we contend shall not be as

fully sustained by this Court in the future as they have been in the past, then the sale of negotiable municipal securities must immediately come to an end. A reversal of this case would be their death blow. No municipality in the United States could ever, thereafter, borrow a dollar, except at a discount which would be ruinous.

All of which is respectfully submitted.

S. F. LEIB,
Attorney for Defendant in Error.

Supreme Court of the United States.

No. 508.—October Term, 1901.

The Tulare Irrigation District, George G. Kelly, and G. Garibaldi, as Executor of the last will of B. W. Jauchius, deceased, Plaintiffs in Error, vs. Alfred Shepard.	In error to the Circuit Court of the United States for the Southern District of California.

[March 24, 1902.]

This is a writ of error to the Circuit Court of the United States for the Southern District of California, sued out for the purpose of reviewing a judgment of that court in favor of the defendant in error in an action brought by him against the irrigation district only, to recover interest due on certain coupons attached to bonds issued by the district for the purpose of raising money to build its irrigation works. It appeared from the complaint that the plaintiff was a resident of Michigan, and that the Tulare irrigation district had at all times since September 2, 1889, been a corporation duly incorporated under the laws of the State of California, and since that time had been acting as such corporation; that under the laws of such State the irrigation district duly issued its bonds for the amount of $500,000 with coupons attached; that the plaintiff was a *bona fide* purchaser and holder of certain of those coupons, and that he had paid full value for the same, in the usual course of business and before any of them were due or dishonored, and in good faith and without any notice of any defect or invalidity of the same or any of them. Judgment for $13,185 and interest was demanded. The defendant demurred to the complaint, the demurrer was overruled, (94 Fed. Rep. 1,) and the defendant then answered.

The answer, among other things, set up various alleged irregularities and omissions which occurred in the attempted formation of the irrigation district, on account of which, as contended, the corporation never was legally formed and never had power to issue bonds, and whatever bonds may have been issued were for those reasons void. The individual defendants at this stage applied to the court for an order permitting them to intervene in the action as parties therein, and to unite with the defendant corporation in resisting the claims of the plaintiff in this action. The court thereupon ordered that the petitioners' complaint in intervention should be filed without prejudice to the plaintiff's motion to strike out the same. They then filed what they termed their complaint in intervention in this

action, (which is nothing more than an answer to the complaint,) in which they set up that the defendant Kelly was a citizen of the United States and a resident of the State of Massachusetts, and that ever since January 1, 1889, he had been and was at the time of the commencement of the suit the owner of the land which he described, and which was situate within the boundaries of the county of Tulare, California, and within the boundaries of the alleged Tulare irrigation district; that Jauchius, the other defendant, was a citizen of the United States and a resident of the State of California, and that he, ever since January 1, 1889, had been the owner of certain other described real property also situate in the district, and they alleged that they were interested in the subject matter of the action and in the success of the defendant; that if the bonds and coupons mentioned in the plaintiff's complaint were adjudged valid claims against the district, then the property of intervenors in the district would be assessed and taxes levied thereon to pay the claim of the plaintiff. They then set up substantially the same defenses that were pleaded by the irrigation district in its answer. Also that to permit the collection of the bonds would take defendants' property without due process of law and in violation of the Federal Constitution.

The chief defect as set up in both pleadings and specially argued here was in regard to the organization of the district, the defect being an alleged insufficiency of the notice of the intended presentation of the petition to the board of supervisors, by reason of which, as averred, no legal notice was given, and, therefore, all subsequent proceedings were void and of no effect. Subsequently to the service of the answer Jauchius died, and his executor was made a party in his place.

The case came to trial upon a stipulation to waive a jury, was submitted upon an agreed statement of facts, and thereafter the court made its general findings in favor of the plaintiff, assessed his damages at the sum of $13,185, and ordered judgment against the irrigation district for that sum.

It was stipulated that any of the facts contained in the statement might be offered in evidence by any party to the action, and when so offered the party not offering the same might object to such facts or any of them upon legal grounds which might exist against their admissibility. The statement of facts contained twenty-one paragraphs. The first twelve were offered in evidence on the part of the plaintiff and received by the court under the defendant's objection and exception. The facts thus admitted showed that under the provisions of the irrigation act of the State of California, approved March 7, 1887, an effort was made in the county of Tulare to form an irrigation district to be known as "Tulare irrigation district," and such proceedings were had in that behalf that what purported to be a certified copy of an order of the board of supervisors of that county was duly filed with the county recorder on September 14, 1889; that order recited that

the board of supervisors of Tulare County, State of California, met as a board of canvassers on Monday, September 2, 1889, for the purpose of determining the result of the special election held in Tulare County on August 24, 1889, to vote upon the subject of the organization of the Tulare irrigation district and officers therefor, by which it appeared that there were 484 votes cast in favor of forming the district and 7 against it. The order then continued as follows: "And we further declare the territory embraced in the following described limits, to wit: (describing territory) an irrigation district duly organized under the name and style of 'Tulare irrigation district,' being situate in the county of Tulare, State of California." This declaration was made in accordance with section 3 of the act to form irrigation districts. The order further declared the election of the directors in the various divisions of the district.

The material sections of the act under which the attempt to form the district was made are to be found set forth in the case of *Fallbrook Irrigation District* v. *Bradley*, (164 U. S. 112, 116.)

The persons declared by the order of the board of supervisors to have been elected as officers of the district immediately thereafter assumed to organize as such officers, and thereupon entered upon their duties the same as though said district had been legally organized and as though they had been legally elected as such officers, and they and their successors in office have ever since continued to act as such officers and to maintain the name of "Tulare irrigation district," and in its name have caused the defendant to act as though it was in every respect legally organized as an irrigation district under the act of the legislature, and in that behalf it has at all such times had the name "Tulare irrigation district" printed upon a sign above a door in front of an office in which the archives and papers of said defendant are kept; and its board of directors have met from time to time in such room from the time of such purported organization thereof until the present, weekly and sometimes oftener, averaging twice a month. In June, 1890, pursuant to the provisions of the statute, an election was held within the district to determine whether its bonds should be issued, resulting in favor of issuing the same, and in the years 1891, 1892, 1893 its board of directors purported to issue bonds of such Tulare irrigation district in the sum of $500,000, being 1,000 bonds of the face value of $500 each, and levied assessments on the property embraced in said district, purporting to act in so doing under the act of the legislature, and previous to July 1, 1896, it assessed, levied and collected taxes upon the lands in such district of over $100,000, and paid the same out through its treasurer as interest upon such bonds; the proceeds arising from the sale of the bonds have been used by the district in constructing a system of canals, ditches and laterals through the lands of the district, by means of which such lands have been irrigated;

it has engaged in litigation as plaintiff in suits before the issuing of such bonds, and therein alleged that it was a corporation under the provisions of the act of the legislature, and from the time of its purported organization until the present time, whatever it has done and performed, it has done and performed in the same manner as if it had been legally organized as such district, in full compliance with the law, and so continues to act and hold itself out as a corporation organized under that law. No one ever brought suit or took any action to prevent the issuing of any of the bonds, nor was any suit or action ever brought to annul or cancel or have declared void any of the bonds until after the year 1896. No action in the nature of a *quo warranto* was ever commenced, nor any other proceeding, to test the validity of the organization of the district.

The plaintiff at the commencement of the action was the holder and owner of the coupons upon which action was brought, and became the holder of the coupons on which he brought his action under the circumstances detailed in the agreed statement of facts, showing that he was a *bona fide* holder for value without notice.

The plaintiff also offered, and the same was received in evidence, the judgment roll *In the matter of Tulare Irrigation District*, in the Superior Court of Tulare County, which was a proceeding under what is called the California confirmation act in regard to irrigation districts, and which is mentioned in *Tregea* v. *Modesto Irrigation District*, (164 U. S. 179, 181.) The proceedings under this confirmation act showed a judgment of the court confirming the validity of the organization of the district. This was duly objected to, and received under the exception of the defendants. After some oral evidence had been given in regard to the execution of the bonds by the officers of the district, the plaintiff rested.

The defendants then offered separately each of the remaining paragraphs from 13 to 21, both inclusive, in the agreed statement of facts, and each under the objection of the plaintiff and exception of the defendants was excluded. From the facts thus offered it appears that a petition addressed to the board of supervisors of Tulare County was on July 1, 1889, filed with the board at a regular meeting; that this petition was printed and published prior thereto for two weeks during the month of June, 1889, and in a newspaper printed and published in Tulare County. The petition contained a statement that the petitioners were freeholders owning land within the district which was described in the petition, and that it was all situated within Tulare County, and that the petitioners desired to provide for the irrigation of the same; that the proposed district as described was susceptible of one mode of irrigation from a common source and by the same system of works, by conveying the waters of Kaweah River by means of dams thereon and by main and distributing canals therefrom. The petitioners prayed that the district described in the petition be organized

into an irrigation district under the act of the legislature of California approved March 7, 1887. The petition then gave the boundaries of the proposed district, and asked that it be designated as the Tulare irrigation district. This petition was signed at the end thereof, each petitioner stating the number of acres owned by him. Following these signatures was a paper like this:

"NOTICE.

"Pursuant to the statutes in such cases made and provided, notice is hereby given that the above and foregoing petition will be presented to the board of supervisors in and for the county of Tulare, at their first regular meeting in the month of July, 1889, to wit, on Monday the first day of July, 1889, at which time any person or persons desiring so to do may present their objections, if any they have, why said petition should not be granted."

The signatures to the petition were not repeated at the end of the notice. This notice was in the same type as the petition, and in the newspaper it was enclosed with the petition between two black lines across the column, the first at the head of the petition and the last at the end of the notice.

The alleged defect in this publication consists in the fact that although the petition was printed in full and the names of the signers with the number of acres owned by them follow the petition, yet as the notice of the presentation of the petition follows the signatures to such petition, and the notice is not signed by the petitioners, it lacks those essential signatures, and for that reason is not a valid notice, and becomes in law no notice whatever.

The defendants also offered in evidence a second judgment in the matter of the Tulare irrigation district setting aside the former judgment of confirmation and refusing to confirm the validity of the organization of the district. The judgment was excluded upon the objection of the plaintiff. All these offered facts having been excluded, the court made a general finding in favor of the plaintiff. The individual defendants now contend that the court, in granting judgment for the plaintiff, did in effect permit the taking of their property without due process of law, in violation of the Constitution of the United States.

Mr. Justice PECKHAM, after making the foregoing statement of facts, delivered the opinion of the Court.

It is agreed in the statement of facts in this case that the moneys received from the sale of the bonds in suit were applied to building and constructing the irrigation works now in use by the defendant corporation. It has, therefore, received the full consideration for which the bonds were issued, has built its works with the proceeds, and uses such works for the purposes intended. Notwithstanding these facts, it now refuses to pay the bonds or the interest thereon, and, while acting as a corporation, at all times, still

sets up that it was never legally organized, and hence had no legal right to issue any bonds.

In the case of *Commissioners &c.* v. *Bolles*, (94 U. S. 104, 110,) a case involving facts somewhat similar, this court said: "Common honesty demands that a debt thus incurred should be paid." That sentiment has lost no force by the lapse of time, and we think it applies in its full strength to this case. Unless there be some settled rule of law which prevents a recovery in this action, the judgment under review should be affirmed.

The sole ground of defense which has been urged at the bar has been an alleged defect in the notice of the intended presentation of the petition to form the district, to the board of supervisors, the defect consisting in the omission to add at the end of the notice the names of the signers to the petition which immediately precedes it.

Section two of the act approved March 7, 1887, commonly called the "Wright Act" of the California legislature, provides that the petition for the organization of an irrigation district shall be presented to the board of supervisors of the county in which the lands are situated, signed by the required number of freeholders mentioned in the first section, which petition must describe the proposed boundaries of the district, and pray that the same may be organized under the provisions of the act. The petition must be presented at a regular meeting of the board of supervisors and be published for at least two weeks before the time at which the same is to be presented, in some newspaper printed and published in the county where the petition is to be presented, "together with a notice stating the time of the meeting at which the same will be presented." In this case a proper petition complying with the provisions of the act was made and signed by the requisite number of freeholders. The petition, with the signatures of such freeholders appended, was published in the proper newspaper, together with a notice as provided for in the act, but the signatures of the freeholders which were appended to the petition were not reproduced at the end of the notice. The petition, signatures and notice were published in the same column and as one entire proceeding, separated from the rest of the contents of the newspaper by a black line across the column immediately preceding the petition and another black line across the column at the end of the notice. In this way it was separated from all other matter in the paper. It is now urged that this failure to reprint the signatures to the petition at the end of the notice rendered it of no effect in law, and that the result was the same as if no notice at all had been published. It is, therefore, argued that the action of the board of supervisors, when the petition was in fact presented and proof taken in regard to the facts stated therein, in accordance with the published notice, was without legal effect, and the determination of the board of supervisors, after a hearing before it, that some of the lands described in the petition would be

benefited by irrigation, including those of the individual plaintiffs in error was wholly without validity, because the board acquired no jurisdiction over the subject on account of the absence of notice; the board, having no jurisdiction, could make no valid determination as to the organization of the district; the district could issue no valid bonds; and the fact of the absence of notice could be shown as a defense to bonds that were issued, no matter under what circumstances the defense should arise. It was then contended that to permit a recovery would result in the taking of the property of the individual defendants, by means of an assessment and without due process of law.

It is not urged here that the plaintiff below was not a *bona fide* purchaser for full value without notice of any defective organization or want of power in the corporation to issue the bonds. Upon the stipulation of facts no such defense could prevail. The whole force of the defense rests, therefore, upon this alleged defective notice because of the failure to reprint the names of the signers to the petition at the end of such notice. Is this such a defect as to practically amount to an absence of notice so that the board of supervisors could acquire no jurisdiction upon presentation of the petition? Certainly the notice could mislead no one. It gave full and detailed information in regard to the time and place at which the petition would be presented to the board of supervisors. It cannot be claimed that the notice itself did not give all the information provided for by the statute, and it warned all persons who might desire so to do to present their objections at the time and place named why the petition should not be granted. Any one on reading the notice obtained thereby all necessary knowledge to enable him to attend at the time and place mentioned and present any objection that he might have against the granting of the petition. The petition which preceded the notice was signed by a sufficient number of landowners, and the notice which followed the signatures to the petition evidently formed part of the proceeding inaugurated by the signers to the petition to take the necessary steps to organize an irrigation district. The whole thing, petition, names of signers thereto, and notice, was published the statutory time and also posted as required. As published, it evidently formed but one proceeding, and the notice was part thereof. Could any one fairly misunderstand the fact that the notice was part of the action of the signers to the petition, and, when precisely in accordance with the terms stated in the notice, the petition was publicly presented to the board of supervisors, was not the statute sufficiently complied with to give jurisdiction to that body to proceed to determine the facts in accordance with the provisions of the statute? Was not the notice fairly and substantially authenticated as a notice given by the signers to the petition?

In the case of *In re Central Irrigation District*, (117 Cal. 382,) the Supreme Court of that State has held that the publication of a notice similar to this, unsigned and unauthenticated, was invalid, and the defect could not be cured by proof of actual notice or knowledge on the part of those to be affected thereby. It is urged that this decision of the Supreme Court of the State should be followed by us, because it is in effect the construction given by the State court to a statute of the State. We are not entirely persuaded that this claim is well founded. It might, on the contrary, be urged with much force that the decision was based upon principles of general law as to whether a notice presupposes by its very terms, and makes absolutely necessary in all cases, a signature at the end thereof, and it might be claimed that the case came within the principle decided in *Town of Venice* v. *Murdock*, (92 U. S. 494,) where this court refused to follow the prior decisions of the Court of Appeals of the State of New York made in cases arising upon a New York statute and under a similar state of facts, on the ground that those decisions did not present a case of statutory construction. See also *Thompson* v. *Perrine*, (103 U. S. 806.) And again, the bonds in question here were issued not later than 1893, while the decision of the California State court was not made until June, 1897, and there being no other decision of the State court upon the particular point it might be reasonably maintained that the matter should be regarded as open to be decided in accordance with our own views of the subject.

We do not deem it necessary to decide the question here, because there are other facts upon which we can base our judgment without impugning the decision of the State court. Assuming, therefore, for the purpose of this case, though not deciding, that the notice was insufficient, and did not fully comply with the statute, it will be seen that the case above referred to does not decide that the question of the defective organization could be raised as against *bona fide* holders of bonds issued by the district. The action in that case was commenced under a California statute providing for the taking of proceedings to confirm the validity of the organization of an irrigation district, and although the statute under which an irrigation district is to be formed provides for a determination of the fact of due organization by the board of supervisors, yet the proceedings under the confirmation act are expressly directed to be had to review the determination of that board, so that there is express statutory authority to go behind that determination in that proceeding.

But assuming that the failure to sign the notice resulted in a failure to organize a *de jure* irrigation district, and that in a direct proceeding, such as is provided for by the confirmation act, or in a *quo warranto* action, the determination of the board of supervisors could be reviewed, it does not follow that such determination could be reviewed in a collateral action on

the part of a *bona fide* holder of bonds to recover the principal or interest thereon. In the case spoken of the Supreme Court of California, while deciding upon the invalidity of the organization, refused to pass upon the question whether the bonds of the district were void for the reason that proper notice was not given, and the court in refusing to decide the question remarks that, "It is not proper because some of the bonds (it is insisted) had been sold and had passed into the hands of *bona fide* purchasers before the institution of this proceeding. . . . After the issue, and before the sale, of any of the bonds it may well be of advantage to the district and to intending purchasers that the judgment of a court should be invoked to pass upon the regularity of the action of the district officers, but after sale different questions present themselves. The bonds are negotiable; public corporations are estopped from setting up many defenses of irregularity against the innocent holders of such negotiable securities. Whether or not the holder be an innocent purchaser and a purchaser without notice, is itself a question which cannot be determined in this proceeding. From all these considerations, and others which will readily suggest themselves, it is proper, in cases where bonds of a district have been actually sold before institution of confirmation proceedings, to refuse consideration to questions of the regularity of such sales, leaving their determination to that forum before which appropriate action may be brought to test the questions, for it is only in such an action before such a court that there will be found full and unquestioned jurisdiction of the subject matter, and of all the necessary parties, as well as power to determine all objections and defenses." We may therefore proceed to the inquiry as to the liability of the corporation to a *bona fide* holder of its bonds, without further reference to the above case.

The Supreme Court of the State has held that irrigation districts were public municipal corporations, (*Central Irrigation District* v. *De Lappe*, 79 Cal. 351; *In re Madera Irrigation District*, 92 Id. 296; *Quint* v. *Hoffman*, 103 Id. 566,) and the statute providing for their creation has been held to be one that should be liberally construed. (79 Cal., *supra.*) The Supreme Court of California and this court have also decided that the irrigation act is a valid statute, and that it violates neither the State nor the Federal Constitution. (*Fallbrook case*, 164 U. S. 112–159, and cases cited.)

Even though the irrigation district failed to become organized as a *de jure* corporation, it may still have been acting as a corporation *de facto*. That there may be such a corporation cannot be doubted. (*Baltimore & Potomac Railroad Company* v. *Fifth Baptist Church*, 137 U. S. 568, 571; *Shapleigh* v. *San Angelo*, 167 U. S. 646, 655; see also cases decided by the Federal courts in California, *Miller* v. *Perris Irrigation District*, 85 Fed. Rep. 693, again reported in 99 Id. 143; *Herring* v. *Modesto Irrigation District*,

95 Id. 705; also *Lamming* v. *Galusha*, 81 Hun. 247, affirmed by the Court of Appeals on the opinion of the court below in 151 N. Y. 648; *Stout* v. *Zulick*, 48 N. J. Law, 599; *Snider's Son's Co.* v. *Troy*, 91 Ala. 224; *American Salt Co.* v. *Heidenheimer*, 80 Texas, 344; Taylor on Corporations, 4th ed. sec. 146.)

From the authorities, some of which are above cited, it appears that the requisites to constitute a corporation *de facto* are three: (1) a charter or general law under which such a corporation as it purports to be might lawfully be organized; (2) an attempt to organize thereunder; and (3) actual user of the corporate franchise. The case at bar contains these requisites. There was a general valid law under which a corporation, such as the defendant is claimed to be, could be formed; there was undoubtedly a *bona fide* attempt to organize thereunder, and there has been actual user of the corporate franchise. In the progress of the attempt to organize the district the determination of the board of supervisors was made under the provisions of the statute, declaring the body to be a duly organized irrigation district. Subsequently officers were elected and took office and have ever since discharged the duties thereof under the statute, and a special election was held to determine the question of issuing bonds, and the bonds were issued pursuant to the result of such election, and suits have been commenced in the name of the corporation. In brief, if anything can constitute a *de facto* corporation, the defendant herein constitutes one.

The case of *Norton* v. *Shelby County*, (118 U. S. 425,) contains no doctrine in opposition. In that case the State court of Tennessee had held that the so-called board of commissioners of Shelby County, organized under the act of March 9, 1867, had no lawful existence; that it was an unauthorized and illegal body, and its members were usurpers of the functions and powers of the justices of the peace of the county; that their action in holding a county court was void, and that their acts in subscribing to the stock of the Mississippi Railroad Company and issuing bonds in payment therefor were void. Those acts the bondholders had endeavored to sustain by claiming that they were the acts of *de facto* officers, and that under such circumstances it was not material whether the board of commissioners had a lawful existence or not. This court held there could be no *de facto* officer where the office itself had no legal existence. If there be no office to fill, there can be no officer either *de jure* or *de facto*, and as the act attempting to create the office never became a law, the office itself never came into existence; it was a misapplication of terms to call one an officer who holds no office, and a public office could exist only by force of law.

In the case now before us there was a valid law providing for the creation of just such a corporation as the defendant claimed to be. There was

a *bona fide* attempt to organize under it and there had been a user of the franchise, and within the authorities already cited a corporation *de facto* was thereby constituted.

Being a *de facto* corporation, the general rule is that none but the State can call its existence in question. The courts of California agree that such is the rule. (*People* v. *Montecito Irrigation Company*, 97 Cal. 276; *Quint* v. *Hoffman*, 103 Id. *supra;* see also, Cooley on Constitutional Limitations, page 312, 4th ed.; *Swartwout* v. *Michigan Air Line Co.*, 24 Mich 389, 393.) The rule as stated by Cooley is as follows:

"In proceedings where the question of whether a corporation exists or not arises collaterally, the courts will not permit its corporate character to be questioned, if it appear to be acting under color of law, and recognized by the State as such. . . . And the rule, we apprehend, would be no different, if the constitution itself prescribed the manner of incorporation. Even in such a case, proof that the corporation was acting as such, under legislative action, would be sufficient evidence of right, except as against the State, and private parties could not enter any question of regularity. And the State itself may justly be precluded, on principles of estoppel, from raising any such objection, where there has been long acquiescence and recognition."

It was held in *Shapleigh* v. *San Angelo*, (167 U. S. *supra*,) that none but the State could impeach the validity of the creation of a municipal organization, and that if it acquiesced therein the corporate existence could not be collaterally attacked. The court, through Mr. Justice Shiras, said:

"The doctrine successfully invoked in the court below by the defendant, that where a municipal incorporation is wholly void *ab initio*, as being created without warrant of law, it could create no debts and could incur no liabilities, does not, in our opinion, apply to the case of an irregularly organized corporation, which had obtained, by compliance with a general law authorizing the formation of municipal corporations, an organization valid as against everybody, except the State acting by direct proceedings. Such an organization is merely voidable, and if the State refrains from acting until after debts are created, the obligations are not destroyed by a dissolution of the corporation, but it will be presumed that the State intended that they should be devolved upon the new corporation which succeeded, by operation of law, to the property and improvements of its predecessor."

It cannot be said that this corporation was created without warrant of law. There was a valid law and there was a *bona fide* attempt to organize under it, and the most that can be said is that there was a failure to comply with all the directions of the statute by which a corporation *de jure* might be organized.

It is contended, however, that there is an exception to the general rule in such a case as this, because the proceedings of the corporation may result in the levy of an assessment upon lands of private owners within the district, and such owners are therefore permitted to raise at any time the

question of the illegality by reason of the want of notice of the organization of the corporation. The case in 117 Cal. (*supra*,) also the cases of *Reclamation District* v. *Burger*, (122 Cal. 442,) and *Fallbrook Irrigation Company* v. *Bradley*, (164 U. S. 112, 170,) are cited to show the illegality of an organization without notice. On the other hand, *Reclamation District* v. *Gray*, (95 Cal. 601,) holds that the landowner could not collaterally attack the validity of the organization of the district. It is true there was a validating statute passed in that case and the assessment was made after the date of the passage of such act, but the act assumed to cure the irregularities of an organization prior thereto. In *Swamp Land District* v. *Silver*, (98 Cal. 51,) it was again held that no attack upon the organization could collaterally be made, even in an action to recover an assessment. But whatever may be the decisions in California, the plaintiffs in error claim that this court in *Fallbrook Irrigation Company* v. *Bradley*, (164 U. S. *supra*,) has held that there must be notice to the landowner and an opportunity to contest the question of alleged benefits to his property by the organization of the irrigation district, or else the organization is invalid and the landowner can show it in a collateral action and at any time the question may arise. It is not denied that the statute provides for a notice and an opportunity to be heard, but the allegation simply is there was not any notice in fact.

The *Fallbrook case* held that the statute did provide for notice and opportunity to show that the land would not be benefited by being included in the district. It did not hold that under all circumstances the landowner could, at any time, show the absence of notice even against a *bona fide* purchaser of bonds subsequently issued, and we think that the landowner may be prevented from showing want of notice in such a case as the one presented herein—a *bona fide* holder of bonds for full value without notice, and a landowner sleeping upon his rights.

The case of *New York Cable Company* v. *Mayor &c.*, (104 N. Y. 1, 43,) is cited to the point that where it is sought to take the property of an individual under powers granted by the State to a corporation to be formed in a particular manner therein directed, the constitutional protection of the rights of private property requires that the powers granted be strictly pursued and all the prescribed conditions performed, and that hence, if the corporation be simply a *de facto* and not a *de jure* corporation, it cannot take private property *in invitum*. The case simply asserts the principle that the right of eminent domain cannot be exercised by a corporation *de facto*, and that the question of valid organization could be raised when such a corporation sought to condemn lands. That is one of the exceptions to the general rule in regard to a corporation *de facto*. When a corporation seeks to divest title to private property and to take it for the purposes of its incorporation, it must then show that it is a corporation *de jure*, for the

law has only given the right to take private property to that kind of a corporation. But even in such case it may happen that a party would be precluded from setting up the defense by matters *in pais* amounting to an estoppel or an admission.

It is enough to say here, however, that this action by an individual plaintiff against a corporation *de facto*, to recover a money judgment for a debt due the plaintiff, bears no similarity to a proceeding by a corporation to condemn land for its own use, in which case it must be a corporation *de jure*.

In this case we have the fact that the plaintiff is a *bona fide* purchaser of the coupons, for value and without notice of any defect in their validity, and an examination of the statute shows provision for the determination by the board of supervisors of the fact that the district has been duly organized. The record shows the entry of an order by the board of supervisors, by which that board declared the territory embraced in the limits therein described to be an irrigation district, duly organized under the name and style of the Tulare irrigation district, situated in the county of Tulare and State of California. A copy of this order was filed in the office of the county recorder, and after the date of such filing the statute declares the organization shall be complete. Section 15 of the statute provides that when the bonds shall be issued "said bonds shall express on their face that they were issued by authority of this act, stating its title and date of approval."

It thus appears that the statute confided to and imposed upon the board of supervisors the duty of inquiry by proof as to compliance with the statute and required a decision by it in regard thereto, and when the provisions of the statute had been complied with and the corporation organized the duty was imposed upon the board (section 3) to "declare such territory duly organized as an irrigation district under the name and style theretofore designated." All this was done. The board of supervisors made its determination; it was the body provided for and appointed by the statute to make it, and it was to be made by an order duly entered and a copy of it filed with the county recorder, thus making a full and complete record of the fact of the determination by the board of the question of organization confided to the board for decision by the statute itself. The proof shows that officers were duly elected, entered upon the duties of their various offices, and that an election was held and the district determined to issue bonds. The landowners acquiesced in the action of the board of supervisors from the time of the presentation of the petition to that body, so far that none questioned the validity of the organization by *quo warranto* or otherwise, and no suit of any kind was instituted to prevent the issue of the bonds. Not only were no steps taken to prevent their issue or test the right of the district to issue them, but their sale was made after a public election, and

the proceeds arising therefrom were used to create and build the irrigation system, which is still in active operation and now in the possession of the company. Interest has been paid on the bonds thus issued (which issue was not later than 1893) up to 1896. Assessments to pay the interest arising during that time have been levied and collected from the owners of lands in the district. Under these circumstances and by reason of the statute and the recitals in the bonds we think the landowner is estopped from setting up the defense of the want of notice, as against the plaintiff in this case, because he is a *bona fide* holder for full value without notice, and because the landowners acquiesced in the issue of the bonds and have received the full benefit of their proceeds.

The bonds in this case contained a recital in accordance with the provisions of the statute, as follows: "This bond is one of a series of bonds amounting in the aggregate to $500,000, caused to be issued by the board of directors of said Tulare irrigation district, by authority and pursuant to the provisions of an act of the legislature of the State of California entitled 'An act to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes, approved March 7, 1887,' and also by authority of and in accordance with the vote of the qualified electors of said irrigation district at a special election held on the 7th day of June, 1890." The provision in the statute, that the bonds should express on their face that they were issued by authority of the act, stating its title and date of approval, was evidently for the purpose of giving them greater negotiability. A recital as directed by the statute, that the bond was issued by the authority of the statute, and also pursuant to the provisions thereof, and in accordance with the vote of the qualified electors, was a statement upon which a purchaser would have the right to rely, and to assume therefrom that all prior acts necessary to be done to give the bond validity had been done, because otherwise the bond would not be issued under the authority and pursuant to the provisions of an act which provided for certain things to be done when they were not done in the particular case in hand.

But even if the recital were not broad enough to conclude the party who issued the bonds, which we do not at all admit, yet as the statute invested the board of supervisors with power to decide whether the district had been duly organized, the exercise of that power by the board and its determination that the district had been legally and duly organized, (such determination being evidenced by the order duly recorded as provided for in the statute,) was a finding of fact upon which the purchaser had a right to rely, as it was the record provided by the statute, made by a body directed by it to determine the very fact in question, and in such cases the finding is conclusive in favor of a *bona fide* holder of bonds. (*Town of Coloma* v. *Eaves*, 92 U. S. 484; *Town of Venice* v. *Murdock*, 92 Id. 494.)

In *Bissell* v. *The City of Jeffersonville*, (24 How. 287,) the common council of the city had authority to subscribe for stock in a railway company and to issue bonds for such subscription upon the petition of three-fourths of the legal voters of the city. The common council made a determination that the petition presented contained three-fourths of such legal voters, and the bonds were thereupon issued. The bonds having been issued, the city defaulted in the payment of the interest, and an action was brought to recover such installments in the Circuit Court of the United States for the District of Indiana. After the plaintiff had given evidence from the records of the common council that it had determined that three-fourths of the legal voters of the city had petitioned for the issuing of such bonds, the defendant offered parol testimony to show that three-fourths of the legal voters of the city did not so petition. The evidence was admitted under objection, and under the rulings the jury returned a verdict in favor of the defendants, and the case was brought here for review. This court, upon that question, through Mr Justice Clifford, said (page 296):

"Unless three-fourths of the legal voters had petitioned, it is clear that the bonds were issued without authority, as by the terms of the explanatory act it could only apply to a case where the common council of a city had contracted the obligation or liabilities therein specified upon the petition of three-fourths of the legal voters of such city; and if no such petition had been presented, or if it was not signed by the requisite number of the legal voters, the law did not authorize the common council to ratify and affirm the subscription. That fact, however, had been previously ascertained and determined by the board to which the petition was originally addressed."

The court then considered the effect of the determination by the common council as between the defendant and the holders for value of the bonds without notice of the supposed defects in the proceedings under which they were issued and put upon the market, and stated as follows (p. 299):

"Jurisdiction of the subject-matter on the part of the common council was made to depend npon the petition, as described in the explanatory act, and of necessity there must be some tribunal to determine whether the petitioners, whose names were appended, constituted three-fourths of the legal voters of the city, else the board could no. act at all. None other than the common council, to whom the petition was required to be addressed, is suggested, either in the charter or the explanatory act, and it would be difficult to point out any other sustaining a similar relation to the city so fit to be charged with the inquiry, or one so fully possessed of the necessary means of information to discharge the duty. Adopting the language of this court in the case of the *Commissioners of Knox County* v. *Aspinwall et al.*, (21 How. 544,) we are of the opinion that 'this board was one, from its organization and general duties, fit and competent to be the depositary of the trust confided to it.' Perfect acquiescence in the decision and action of the board seems to have been manifested by the defendants until the demand was made for the payment of interest on the

loan. So far as appears, they never attempted to enjoin the proceedings but suffered the authority to be executed, the bonds to be issued, and to be delivered to the railroad company, without interference or complaint. When the contract had been ratified and affirmed, and the bonds issued and delivered to the railroad company in exchange for the stock, it was then too late to call in question the fact determined by the common council, and *a fortiori* it is too late to raise that question in a case like the present, where it is shown that the plaintiffs are innocent holders for value."

The statute in the present case distinctly provides for the determination of the question of fact by the board of supervisors and for the embodying of such determination in an order, to be entered and a certified copy to be filed with the county recorder. It is not left to inference as to which is the body to make the determination.

In *Anderson County Commissioners* v. *Beal*, (113 U. S. 227,) the question arose as to whether there had been the requisite length of notice of the election to determine the question whether or not the bonds should be issued. The statute required that at least thirty days' notice of the election should be given, and it was thereby made the duty of the board of county commissioners to subscribe for the stock and issue the bonds after such assent of the majority of the voters had been given. Subsequently in a suit against the board of county commissioners on coupons due on the bonds that had been issued and which had been bought by a *bona fide* purchaser, the record showed an order for the election made thirty-three days before it was to be held, and that subsequently to the election the board canvassed the returns and certified that there was a majority of the voters in favor of the proposition, and that the board had made such vote the basis of their action in subscribing to the stock and issuing the bonds to the company. The bonds recited on their face that they were issued "in pursuance to the vote of the electors of Anderson County of September 13, 1869." It was held that the statement in the bonds as to the vote was equivalent to a statement that the vote was one lawful and regular in form, such as the law then in force required as to prior notice, and that as respected the plaintiff, evidence by the defendant to show less than thirty days' notice of the election could not avail. At page 238 the court said:

"The bond recites the wrong act, but if that part of the recital be rejected, there remains the statement that the bond 'is executed and issued' 'in pursuance to the vote of the electors of Anderson County, of September 13, 1869.' The act of 1869 provides that when the assent of a majority of those voting at the election is given to the subscription to the stock, the county commissioners shall make the subscription, and shall pay for it, and for the stock thereby agreed to be taken, by issuing to the company the bonds of the county. The provision of section 51 is 'that when such assent shall have been given,' it shall be the duty of the county commissioners to make the subscription. What is the meaning of the words 'such assent?' They mean the assent of the prescribed majority, as the result of an election held in pursuance of such notice as

the act prescribes. The county commissioners were the persons authorized by the act to ascertain and determine whether 'such assent' had been given; and necessarily so, because, on the ascertainment by them of the fact of 'such assent,' they were charged with 'the duty'—that is, the language —of making the subscription, and the duty of issuing the bonds. They were equally charged with the duty of ascertaining the fact of the assent. The record evidence of their proceedings shows that their order for the election was made thirty-three days before the election was to be held; that they met 'pursuant to law for the purpose of canvassing returns of the election;' that they discharged that duty and certified that there was a majority of votes in favor of the proposition; that, in November, 1869, they resolved that, 'in accordance with the vote, heretofore had and taken, of the electors of said county to that effect,' they subscribed for the stock; and that, in July, 1870, in their order authorizing the bonds to be delivered by Joy to the company, they recited that the bonds were issued 'according to the provisions of the vote of the electors of said county.' In view of all this, the statement by the commissioners, in the bonds, that it is issued 'in pursuance to the vote of the electors of Anderson County, of September 13, 1869,' is equivalent to a statement that 'the vote' was a vote lawful and regular in form, and such as the law then in force required, in respect to prior notice. The case is, therefore, brought within the cases, of which there is a long line in this court, illustrated by *Town of Coloma* v. *Eaves*, (92 U. S. 484, 491,) and which hold, in the language of that case, that 'where legislative authority has been given to a municipality or to its officers to subscribe for the stock of a railroad company, and to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the legislative enactment that the officers of the municipality were invested with the power to decide whether the condition precedent has been complied with, their recital that it has been, made in the bonds issued by them and held by a *bona fide* purchaser, is conclusive of the fact, and binding upon the municipality; for the recital is itself a decision of the fact by the appointed tribunal.' This doctrine is adhered to by this court. (*Dixon County* v. *Field*, 111 U. S. 83, 93, 94.)"

In *Andes* v. *Ely*, (158 U. S. 312,) the doctrine was affirmed that where an officer is charged by law with the duty to decide certain facts, his decision thereon is conclusive and takes the form of a judgment, only to be reviewed by a higher court. At page 324 the court said: "Whether the various steps were taken which in this particular case justified the issue of the bonds, was a question of fact; and when the bonds on their face recite that those steps have been taken it is the settled rule of this court that in an action brought by a *bona fide* holder the municipality is estopped from showing the contrary."

In *Provident Life & Trust Company* v. *Mercer*, (170 U. S. 593,) where the fact whether a condition precedent had been performed before the issuing of the bonds was confided for decision to a trustee, it was held that his decision that the condition precedent had been complied with was conclusive in favor of a *bona fide* holder, even though the condition had in fact not been performed.

And in the case of *Waite* v. *City of Santa Cruz*, decided at this term, many authorities upon this question are cited in the opinion by Mr. Justice Harlan. Those authorities need not be repeated here, a reference to them as contained in that opinion being all that is necessary.

The case of *Ogden City* v. *Armstrong*, (168 U. S. 224,) had nothing to do with the principles governing the law relating to *bona fide* owners of municipal bonds, or with the effect of recitals contained in such bonds. It was a case of an alleged invalid assessment levied to collect the cost of paving one of the public streets in the city. There was a direct attack made upon the validity of the assessment, founded upon an alleged lack of jurisdiction on the part of the common council. The action was maintained under a well recognized head of equity jurisdiction, on the ground that the assessment, valid on its face, constituted a cloud upon the plaintiff's title, which required evidence *aliunde* to remove.

In addition to the strength of the position of the plaintiff in the action as a *bona fide* purchaser and holder of the bonds, the position of the defendants merits due consideration. Regarding the individual defendants, it is scarcely possible to believe that they were not aware of the proceedings above recited, taken to organize the corporation, and thereafter to issue its bonds, even though it should be admitted that the published notice was not legally sufficient to comply with the statute. They were the owners of land within the proposed district. The proceedings were all of a public nature, and two public elections were held within the district before the bonds were issued. Of these facts, already detailed, we say it is impossible to believe that the individual defendants did not have knowledge at the time of their occurrence, and yet they took no action to prevent the issuing of the bonds or to call in question by the slightest hint the validity of the organization of the district as a corporation. On the contrary, they entirely acquiesced in all the proceedings leading up to their issue, in obtaining the moneys therefrom, in the expenditure thereof for the purpose for which the bonds were issued, and in paying during several years the assessments made upon the lands within the district for the purpose of paying the interest on the bonds which had been issued. After all this had been done, we can properly use the language found in the opinion in *Bissell* v. *City of Jeffersonville*, (24 How. *supra*,) at page 299: "It was then too late to call in question the fact determined by the common council, and *a fortiori* it is too late to raise that question in a case like the present, where it is shown that the plaintiffs are innocent holders for value."

Assuming the insufficiency of the notice of the intended presentation of the petition to the board of supervisors, the defendant landowners could have applied to the attorney general for the commencement of an action in the nature of a *quo warranto*, to raise and decide the questions, after

the board had decided the organization was duly formed. Or they could have themselves commenced an action to restrain the proposed issue of bonds on the ground there was no valid corporation, and therefore no valid body to issue them. Their interest as landowners in the district would be sufficient to permit them to maintain such action. On the contrary, they did nothing, and in view of all the facts above detailed, and giving due effect to the provisions of the statute referred to and the determination of the supervisors, together with the recitals in the bonds, it is clear to us that they waived their right to thereafter object on the ground stated, as against a *bona fide* holder of the bonds for value. As to the defendant corporation, it seems so clear that it cannot be heard to set up the invalidity of the bonds on the ground that it was not legally incorporated, that we do not think it necessary to further discuss the question. (Taylor on Corporations, 4th ed. sec. 146, and cases cited in note.)

We have given no weight to the two judgments taken under the confirmation act of the California legislature, the first of which was entered before the bonds were issued, and confirmed the validity of the organization while the second was entered years after the bonds were issued, and refused to confirm the organization. In the view we take of this case it is unnecessary, and it is therefore needless for us to here discuss or determine the question of the effect which ought to be given them under other circumstances. The plaintiff below occupies an unassailable position upon the facts of the case as a *bona fide* purchaser, without reference to either judgment.

We are of opinion there is no error in the record, and the judgment of the court below is, therefore,

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.